



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

129

CRM-M-12053-2025 (O&M)
Date of decision: 05.03.2025

Rahul Kundra @ Chintu and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitin Gupta, Advocate
for the petitioners.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 18.07.2024 passed by learned Judicial Magistrate Ist Class, Ludhiana in FIR No.13 dated 16.02.2024 registered under Sections 307, 323, 341, 506, 148, 149 IPC (Sections 325, 326 IPC added later on) at Police Station Division No.2, District Ludhiana, vide which the petitioners were declared as proclaimed offenders.

2. Learned counsel for the petitioners submits that earlier petitioner No.2 approached the learned Additional Sessions Judge, Ludhiana, for anticipatory bail, by providing all necessary details of his innocence, however, his bail application was dismissed on two occasions, in a mechanical manner on 24.04.2024 (Annexure P-2) and 07.08.2024 (Annexure P-6), respectively and during the interregnum period, a proclamation under Section 82 Cr.P.C. was issued and



executed on 15.06.2024, resulting in both the petitioners being declared as proclaimed offenders on 18.07.2024 (Annexure P-5). Aggrieved by the aforesaid impugned order dated 18.07.2024, the petitioners have approached this Court by way of instant petition.

3. Additionally, all parties involved in the case resolved their dispute amicably with the intervention of the relatives and a compromise deed was executed on 13.05.2024 (Annexure P-3), wherein the complainant party agreed not to pursue the FIR (supra).

4. Learned counsel for the petitioners submits that the impugned order is liable to be set-aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. Lastly, learned counsel for the petitioners submits that both the petitioners undertake to appear before the learned trial Court on each and every date of hearing.

5. Notice of motion.

6. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent – State and supports the order passed by the learned trial Court by contending that the petitioners have not caused appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure their presence.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. While the scheme of criminal justice system necessitates



curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or are concealing themselves. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioners in the present case have themselves come forward and have undertaken to appear before the learned trial Court on each and every date of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 18.07.2024, vide which the petitioners were declared proclaimed offenders as well



as all the consequential proceedings emanating therefrom, are hereby set-aside.

12. Both the petitioners are directed to appear before the learned trial Court within a period of 02 weeks from today and on doing so, they shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.20,000/- (Rs.10,000/- each) to be deposited with PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.

13. The receipt of payment of costs imposed upon the petitioners must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioners only upon verification of the payment of said costs.

14. However, in case, the petitioners fail to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

05.03.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No