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

CRM-M-13553-2025 (O&M)

Date of decision: 11.03.2025

Nalima Warraich

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Bajaj, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking anticipatory bail in case bearing FIR No.151 dated 30.07.2023 under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Division No.6, District Police Commissionerate Jalandhar.

2. Learned counsel for the petitioner, *inter alia*, contends that FIR (*supra*) stands registered in a case arising out of criminal complaint bearing No.NACT/9725/2022 filed under Section 138 of the Negotiable Instruments Act, 1881. The petitioner has already paid the entire amount of Rs.2,65,000/- by



way of banker's cheque, to the complainant in the trial Court on 27.01.2025. The FIR (*supra*) was registered without following the drill of Section 195 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). Moreover, the maximum sentence provided for the offences, under which the FIR (*supra*) is registered, is punishable upto 07 years and no notice under Section 35(3) of BNSS [*erstwhile Section 41-A of Cr.P.C.*] has been served upon the petitioner.

3. Learned State counsel appears on advance notice and submits that in view of the facts and circumstances of the case, it is not a case, where custodial interrogation of the petitioner is required.

4. Having learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds force in the arguments raised by learned counsel for the petitioner.

5. 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.

6. A perusal of the record reveals that FIR (*supra*) was registered without following the due procedure prescribed under the provisions of Cr.P.C. 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. In the judgment passed by this Court in **Sonu Vs. State of Haryana, 2021 (1) RCR (Crl.) 319**, it has been held that the conditions specified in Section 82(2) of Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

7. In view of the aforesaid facts and circumstances, present petition is allowed and the petitioner is directed to surrender before learned trial Court within a period of two weeks from today and on his doing so, she will be admitted to bail on her furnishing bail/surety bonds to the satisfaction of learned trial Court/Illaqa Magistrate concerned.

[HARPREET SINGH BRAR]
JUDGE

11.03.2025

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No