



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

CRM-M-13229-2025

Date of decision: 11.03.2025

GURWINDER SINGH ALIAS KANU

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ketan Chopra, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking quashing of impugned orders dated 28.02.2023 (Annexure P-2), 09.03.2023 (Annexure P-3), 18.03.2023 (Annexure P-4), 24.03.2024 (Annexure P-5), 08.05.2023 (Annexure P-6) and 09.06.2023 (Annexure P-7) whereby, bail of the petitioner has been cancelled and his bail/surety bonds were forfeited and his non-bailable warrants were issued and order dated 04.11.2023 (Annexure P-8), vide which, he was declared as proclaimed offender passed by learned Judicial Magistrate Ist Class, Ludhiana, in case stemming from FIR No.115 dated 29.07.2014 registered under Sections 394/347/506/148/149 of IPC at Police Station Division No.4, District Ludhiana.

2. Learned counsel for the petitioner submits that he was on regular bail in the FIR (*supra*) and was regularly appearing before the learned trial Court. However, the talks of compromise were going on with the complainant, due to which, the counsel of the petitioner told him to not to appear before the trial Court and he will get the matter adjourned on the said pretext. However, on 28.02.2023, the trial Court cancelled the bail of the petitioner and his bail/surety bonds were forfeited to the state and issued arrest warrants against



him. Thereafter, vide orders dated 09.03.2023, 18.03.2023, 24.03.2023, 08.05.2023, 09.06.2023, non-bailable warrants of the petitioner were issued and on 04.11.2023, he was declared as proclaimed offender. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner *inter alia* contends that proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. (now Section 84 of BNSS, 2023) and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as he was never served and the impugned orders are liable to be set aside. He further submits that when he came to know about the fact that he has been declared as proclaimed offender, he moved an application before learned trial Court for grant of bail, which was allowed vide order dated 02.04.2024, however, due to some unavoidable circumstances, the petitioner could not appear before the learned trial Court.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent-State and supports the orders passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, arrest warrants and proclamation were issued to secure his presence.

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



7. 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.

8. A perusal of the impugned orders reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. 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 orders suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (CrI.) 319***, it has been held that the conditions specified in Section 82 (2) 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.

9. 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 petitioner in the present case has himself come forward.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in ***Major Singh @ Major (supra)***, the present



petition is allowed qua the orders dated 28.02.2023 (Annexure P-2), 09.03.2023 (Annexure P-3), 18.03.2023 (Annexure P-4), 24.03.2024 (Annexure P-5), 08.05.2023 (Annexure P-6) and 09.06.2023 (Annexure P-7) whereby, bail of the petitioner has been cancelled and his bail/surety bonds were forfeited and his non-bailable warrants were issued and order dated 04.11.2023 (Annexure P-8), vide which, he was declared as proclaimed offender are quashed.

11. The petitioner is directed to appear before the trial Court within a period of two weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

12. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

13. It is made clear that in case, the petitioner fails to appear before the trial Court within a stipulated period, the interim protection granted by this Court shall be deemed to be vacated.

March 11, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |