2025:PHHC:034971

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

136

CRM-M-13899-2025 (O&M)
Date of decision: 12.03.2025

Parshotam Sharma **...Petitioner**

Versus

State of Punjab and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Angad Sharma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. *(Oral)*

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 *(for short 'BNSS')* for quashing of order dated 07.02.2025 (Annexure P-23), passed by the Court of learned Sub Divisional Judicial Magistrate, Garhshankar in case titled as State of ***Punjab vs. Parshotam Sharma and another***, arising out of FIR No. 113 dated 19.06.2020, registered under Sections 420 and 406 of IPC at Police Station Garhshankar, Hoshiarpur, whereby the petitioner had been declared a proclaimed offender.

2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforementioned case. He was never served with any notice/warrants issued by the learned trial Court. More so, the petitioner had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 of Cr.P.C. Hence, it is urged that the impugned order is liable to be set aside.

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2025.03.12 14:52
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3. Learned State counsel, who has advance notice of the petition and is ready to argue the matter, has resisted the petition by submitting that there is no infirmity in the impugned order and the petitioner has rightly been declared a proclaimed offender as he was running away from the process of Court. She has, thus, prayed for dismissal of the present petition.

4. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

5. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the learned trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 07.02.2025 suffers from material illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

6. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on 09.10.2024, since the non-bailable warrants issued against the petitioner were received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 07.01.2025. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its satisfaction much less proper satisfaction that that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance

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in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561.***

7. Further, a perusal of the statement of serving police official reveals that the proclamation was executed only on 05.01.2025 requiring the petitioner to cause his appearance before the learned trial Court on 07.01.2025, which means that the petitioner was not granted mandatory period of 30 days to cause his appearance before the trial Court. Hence, the same was in clear violation of the provisions of Section 82(1) Cr.P.C., as per which, a specified time of not less than 30 days is required to be given to the accused from the date of publishing such proclamation which is mandatory in nature. Reliance in this regard can be placed upon ***Gurappa Gugal and others Vs. State of Mysore : 1969 CriLJ 826*** and ***Shokat Ali Vs. State of Haryna : 2020(2) RCR (Criminal) 339.***

8. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 07.02.2025 (Annexure P-23), passed by the Court of learned Sub Divisional Judicial Magistrate, Garhshankar in case titled as State of ***Punjab vs. Parshotam Sharma and another***, arising out of FIR No. 113 dated 19.06.2020, registered under Sections 420 and 406 of IPC at Police Station Garhshankar, Hoshiarpur, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

9. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of

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BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

10. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

11. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

12. It is made clear that in case the petitioner fails to appear before the learned trial Court within a period of four weeks from today, this petition shall be deemed to be dismissed.

12.03.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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