

CRM-M-14173-2025
Date of decision: 18.03.2025

...PETITIONER

STATE OF PUNJAB

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

1. This is the first petition filed under Section 528 Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023 seeking quashing of impugned order
dated 31.01.2025 passed by learned Chief Judicial Magistrate, Kapurthala
(Annexure P-8), whereby the petitioner was declared as proclaimed person in
a case stemming from FIR No.140 dated 24.04.2020 registered under Section
61 of the Excise Act, 1914 and Section 188 IPC at Police Station City
Kapurthala, District Kapurthala.

2. Learned counsel appearing for the petitioner submits that the petitioner was on anticipatory bail and was regularly appearing before the learned trial Court, but due to some unavoidable circumstances, the petitioner could not appear before the learned trial Court on 04.10.2024 and his bail order/personal bonds were cancelled and forfeited to the State and non-bailable warrants have been issued against him. Thereafter, the petitioner filed an application for grant of anticipatory bail, however the same was dismissed on 08.01.2025 (Annexure P-5). Aggrieved by the same, the petitioner



approached this Court by way of filing a petition bearing CRM-M No.4692 of 2025, which was allowed vide order dated 28.01.2025 and the petitioner was directed to surrender before learned trial Court within two weeks. However, in the meantime, he was declared as proclaimed person on 31.01.2025 by the learned trial Court.

3. Learned counsel for the petitioner *inter alia* contends that after the interim protection granted by this Court vide order dated 28.01.2025, the petitioner was about to surrender before the learned trial Court, however, vide order dated 31.01.2025, the learned trial Court declared him as proclaimed person. As such, non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner.

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 order 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, proclamation was 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 order 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 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) 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 and the impugned order dated 31.01.2025 (Annexure



P-8), vide which, the petitioner was declared as proclaimed person is 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.5,000/-, in addition to the cost imposed vide order dated 28.01.2025, to be deposited with All India Pingalwara Charitable Society, Amritsar, 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 18, 2025
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(HARPREET SINGH BRAR)
JUDGE

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