



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

CRM-M-19030-2025

Date of decision: 07.04.2025

CHANDER SHEKHAR

...PETITIONER

V/S

SANJEEV KUMAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Choudhary, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the first petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking quashing of impugned order dated 17.01.2025 passed by learned Judicial Magistrate Ist Class, Gurdaspur (Annexure P-4), whereby the petitioner was declared as proclaimed offender in a complaint case bearing NACT No.519 of 2023 under Section 138 of Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner submits that petitioner was unaware of the complaint (*supra*) filed against him. Therefore, he could not appear before the trial Court. Due to which, the trial Court vide order dated 17.01.2025, declared the petitioner as proclaimed offender. Thereafter, the petitioner filed an application seeking the relief of anticipatory bail before learned Additional Sessions Judge, Gurdaspur, however, the same was also dismissed.

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. and non-compliance of the mandatory provisions vitiates the entire proceedings, which suffers from incurable illegality as he was never served and the impugned order is liable to be set aside.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab who is present in the Court, accepts notice on behalf of respondent No.2-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 17.01.2025 (Annexure P-4), vide which, the petitioner was declared as proclaimed offender 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.10,000/- to be deposited with the All India Pingalwara Charitable Society, Amrtisar 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.

April 07, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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