

**CRM-M-18840-2025 (O&M)****1****143 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-18840-2025 (O&M)****Date of Decision: 04.04.2025****PREM BAHADUR SINGH AND ANOTHER****...PETITIONERS****Versus****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. G.K. Mann, Sr. Advocate with
Mr. Anmol Jeevan S. Gill, Advocate for the petitioners.

Mr. Subhash Godara, Addl. AG Punjab.

**********HARPREET SINGH BRAR J. (ORAL)**

1. The present petition has been filed under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking quashing of the orders dated 31.05.2023 and 07.08.2023 (Annexures P-8 and P-9 respectively) passed by learned Judicial Magistrate Ist Class, Faridkot vide which the petitioners have been declared as proclaimed persons in case bearing complaint No. 61 dated 24.04.2019 under Sections 191, 196, 406, 420, 465, 467, 468, 471, 474 and 120-B of Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') read with Section 340 of Cr.P.C.

2. Learned counsel appearing for the petitioner *inter alia* contends that petitioner No. 2 is resident of Canada and petitioner No. 1 is more than 80 years of age. In the present case, no service of warrants was effected upon petitioner No. 2 as she was residing in Canada and she was declared as proclaimed person vide order dated 31.05.2023 without following the proper procedure and although petitioner No. 1 was residing in India, but no service was effected upon him as well and the impugned orders are liable to be set aside on the ground that the



CRM-M-18840-2025 (O&M)

2

mandate of Section 82 (1) of Cr.P.C. has not been followed in its letter and spirit by the trial Court as the warrants of arrest were never served to the petitioners. It is also submitted that the petitioners undertake to appear before the trial Court on each and every date.

3. Per contra, learned State counsel supports the order passed by the learned trial Court by contending that the petitioners 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 their presence.

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

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 impugned orders reveal that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or are concealing themselves. 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



CRM-M-18840-2025 (O&M)

3

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.

7. 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 petitioners in the present case have themselves come forward and have undertaken to appear before the trial Court on each and every date.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned orders dated 31.05.2023 and 07.08.2023 (Annexures P-8 and P-9) respectively vide which the petitioners were declared proclaimed persons, are hereby set aside along with all consequential proceedings arising therefrom. The petitioners are directed to appear before the trial Court within four weeks and on their doing so, they shall be admitted to bail on their furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs. 10,000/- each (to be paid by both petitioners separately) to be deposited with the **PGIMER Poor Patient Welfare Fund, Chandigarh**, for wasting precious time of the Court.

9. The receipt of payment of costs imposed must be presented before learned jurisdictional/Illaq Magistrate. The learned Court below is directed grant bail to the petitioners only upon verification of payment of said costs.



10. It the petitioners fail to surrender before the learned trial Court/Illaq
Magistrate, within the stipulated period, the interim relief granted to the
petitioners vide this order shall be deemed to be automatically vacated.

(HARPREET SINGH BRAR)
JUDGE

04.04.2025
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No