



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.271

CRM-M-19137-2025(O&M)

Date of decision : 21.05.2025

MOHD. ANWAR

..... Petitioner

VERSUS

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Imran Farooqi, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG Punjab.

KIRTI SINGH, J. (Oral)

1. The present petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 has been filed for quashing of impugned order dated 19.01.2024, passed by learned SDJM, Malerkotla in CRM-736-2023 titled as State of Punjab vs. Mohd. Anwar etc. arising out of FIR No.83 dated 11.07.2023, under Sections 498-A, 323, 325 and 34 IPC, registered at Police Station City-II Malerkotla, District Malerkotla.

2. Learned counsel for the petitioner *inter alia* submits that petitioner had left for Saudi Arabia, where he was employed on 17.07.2023, and returned to India only on 03.02.2025. He submits that petitioner has been wrongly declared proclaimed offender vide order dated 19.01.2024, without proper compliance of mandatory provisions of Section 82 Cr.P.C. No notice or summons was served on him and no genuine efforts were made to inform the petitioner about the pending proceedings. Thus, neither were the non-bailable warrants nor the proclamation was served upon him at his foreign address, in compliance of Section 82 and 105 Cr.P.C.



3. *Per contra*, learned State counsel, has submitted that the petitioner, despite the proclamation, has failed to appear before the trial Court and has been rightly declared a proclaimed offender vide the impugned order and in addition, the petitioner is evading the process of Court which is highly deprecated on his part and in view of above, he does not deserve the concession.

4. Heard the submissions made by respective learned counsels for the parties.

5. According to the averments, the petitioner was residing abroad at the time of registration of the FIR and was not duly served in compliance of the mandatory provisions contained under Sections 82 & 105 Cr.P.C.

6. A person cannot be said to “*abscond*” or “*evade*” the execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence can be made on the judicial dictum rendered in the case of “*M.S.R. Gundappa v. State of Karnataka*” (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

7. Reliance can also be placed upon the judgment of this Court rendered in CRM-M-1513-2009 tiled as “*Mehar Singh And Anr. vs State of Punjab*” wherein it was held as under:

“In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P- 4) does not reveal that the petitioners were ever attempted to be served in Canada especially when there was no material on record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code. Accordingly, the impugned order dated 7-10-2008 (Annexure P-10), whereby the petitioners were declared proclaimed offenders, is set aside.”



8. A perusal of the judicial record reveals that no effort was made to effect personal service of the petitioner through the embassy of India located in the concerned country where the petitioner was residing at the relevant time, thus, making it clear that the impugned order was not passed in consonance with the mandate of Sections 82 & 105 of Cr.P.C. and is not sustainable in the eyes of law.

9. Therefore, in light of the afore-said judicial pronouncements and discussions made hereinabove, this Court is of the firm view that the impugned order dated 19.01.2024 passed by the SDJM, Malerkotla, vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

10. In view of the above, the present petition stands allowed and the impugned order dated 19.01.2024 passed by the SDJM, Malerkotla is set aside/quashed **subject to payment of Rs.50,000/- to be deposited by the petitioner in Poor Patient Welfare Fund, PGIMER, Chandigarh.** However, the petitioner is directed to surrender before the Court concerned within a period of two weeks and move an appropriate application along with receipt of cost and the trial Court concerned would release the petitioner on the bail bonds and surety bonds to its satisfaction. In case he fails to appear before the trial Court on the said date, this order would be of no avail to the petitioner.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

21.05.2025

Kavita
Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No