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

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CRM-M-20492-2025 (O&M)

Date of decision: 21.04.2025

Gurwinder Singh**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rishu Mahajan, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, 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 quashing of order dated 27.10.2022 (Annexure P-2), passed by the Court of learned Judicial Magistrate First Class, Jalandhar in case titled as ***State of Punjab vs. Gurwinder Singh @ Ghuga etc.***, arising out of FIR No. 30 dated 02.03.2016, registered under Sections 323, 324, 341 and 34 of IPC at Police Station Maqsudan, Jalandhar, whereby the petitioner had been declared a proclaimed person.

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. The petitioner was on bail and was regularly appearing before the learned trial Court. However, in order to earn his livelihood, he had to go abroad in November, 2021 and returned back to India only on 27.03.2025. It is further argued that he was never served with any notice/warrants issued by the learned trial Court at his ordinary place of

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residence. He came to about the same only when he returned to India. More so, the petitioner had been declared a proclaimed person without following the proper procedure prescribed under Section 82 of Cr.P.C. The petitioner is ready to join the Court proceedings. Hence, it is urged that the impugned order is liable to be set aside.

3. Learned Assistant Advocate General, Punjab has argued that the petitioner was having knowledge about the pendency of the trial and had intentionally avoided his appearance before the learned trial Court. Therefore, he was rightly declared a proclaimed person. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties 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 person, I am of the considered opinion that the impugned order dated 27.10.2022 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 02.09.2022, 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 27.10.2022. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has

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not recorded its 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 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 the serving police official reveals that the proclamation was not read over in some conspicuous place of the town or village in which the petitioner was supposed to be residing. As per Section 82 (2) of Cr.P.C. for publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Reliance in this regard can be placed upon ***Pawan Kumar Gupta Vs. The State of W.B. : 1973 CriLJ 1368.***

8. Further, a perusal of order dated 07.05.2022 would reveal that it was in the notice of the learned trial Court that the petitioner had gone abroad. However, no efforts whatsoever were made by the Court to know the address of the petitioner, where process could be sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can

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reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

9. 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 27.10.2022 (Annexure P-2), passed by the Court of learned Judicial Magistrate First Class, Jalandhar in case titled as ***State of Punjab vs. Gurwinder Singh @ Ghuga etc.***, arising out of FIR No. 30 dated 02.03.2016, registered under Sections 323, 324, 341 and 34 of IPC at Police Station Maqsudan, Jalandhar, whereby the petitioner had been declared a proclaimed person, is quashed with all consequential proceedings arising therefrom.

10. Keeping in view the fact that the petitioner is ready to join the Court proceedings which would obviously help in speedy conclusion of trial, he is directed to surrender before the learned trial Court within a period of 15 days from today and on doing so, the learned trial Court shall release him on bail, subject to his furnishing fresh personal/surety bonds to its satisfaction.

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 the stipulated time, this petition shall be deemed to be dismissed.

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13. However, this relief shall be subject to payment of cost of Rs. 10,000/-, to be deposited by the petitioner with the District Legal Services Authority, Jalandhar.

21.04.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No