

153 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-28643-2025 (O&M)
Date of Decision: 22.05.2025

SANJAY KUMAR

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akhil Dadwal, Advocate
for the petitioner.

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 order dated 19.03.2025 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Mukerian vide which the petitioner has been declared as proclaimed person in case bearing FIR No. 85 dated 02.11.2020 registered under Section 420 of Indian Penal Code at Police Station Hajipur, District Hoshiarpur.
2. Learned counsel appearing for the petitioner *inter alia* contends petitioner was granted bail in the aforesaid FIR and was regularly appearing before the learned trial Court at Mukerian. However, in June 2024, petitioner met with a serious accident in Jammu & Kashmir, which rendered him physically incapacitated and unable to attend the Court proceedings. Thus, on 22.04.2024, petitioner's counsel moved an application for exemption from personal appearance, which was allowed and the case was adjourned to 13.05.2024. On 13.05.2024, another application for exemption from personal appearance was moved on behalf of the petitioner, but the same was declined by learned trial Court and non-bailable warrants were issued against the petitioner. Thereafter, vide impugned order dated 19.03.2025, learned trial Court proceeded to declare the petitioner as proclaimed person. Learned



counsel further contends that petitioner was declared as proclaimed person vide the impugned order without following the proper procedure and the impugned order is liable to be set aside on the ground that the 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 was never served to the petitioner. It is also submitted that the petitioner undertakes 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 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.

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 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



CRM-M-28643-2025 (O&M)

-3-

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.

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 petitioner in the present case has himself come forward and has 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 order dated 19.03.2025 (Annexures P-6) vide which the petitioner was declared proclaimed person, is hereby set aside along with all consequential proceedings arising therefrom. The petitioner is directed to appear before the trial Court within four weeks 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 Indian Pingalwara Charitable Society Jalandhar Branch, Makdoo Pura Dhobi Mohalla, Jalandhar***, for wasting precious time of the Court.

9. The receipt of payment of costs imposed must be presented before learned trial Court. The learned Court below is directed grant bail to the petitioner only upon verification of payment of said cost.

10. It the petitioner fails to surrender before the learned trial Court, within the stipulated period, the interim relief granted to the petitioner vide this order shall be deemed to be automatically vacated.

(HARPREET SINGH BRAR)
JUDGE

22.05.2025		
Ajay Goswami	Whether speaking/reasoned	Yes/No
	Whether Reportable	Yes/No