



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

143

CRM-M-30879-2025(O&M)

Date of Decision: 21.07.2025

SHER SINGH BAINS

...Petitioner

Versus

RXXX AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The prayer in the present petition filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 is for quashing of order dated 28.11.2023 (Annexure P-10), whereby the petitioner has been declared a 'Proclaimed Offender' in IPC Complaint No. 337 of 2019, CIS No. 30 dated 24.07.2019 (Annexure P-5), registered under Sections 376 and 506 of the *Indian Penal Code*, and Section 25 of the Arms Act. In the said complaint, the petitioner was summoned vide Order dated 22.04.2022 (Annexure P-7) under Sections 376 and 506 IPC.

2. The learned counsel for the petitioner submits that the entire criminal proceedings against the petitioner are a result of a false and vindictive FIR, lodged on 28.12.2017 by the complainant, who is the sister-in-law of the petitioner. Upon investigation, the police found the allegations to be without merit and accordingly recommended cancellation of the FIR twice. The trial Court thereafter proceeded to club the same with the original complaint, and on its basis the learned trial Court passed the order dated 22.04.2022, summoning the petitioner under Sections 376 and 506 IPC. The



petitioner, aggrieved by the said summoning order, approached this Court by way of CRM-M No. 56430-2022, which was disposed of on 07.07.2023. Thereafter the learned trial Court in order to procure the presence of the petitioner, issued notice to the petitioner, which was received back with the report that the petitioner was residing abroad. Learned trial Court, instead of serving the petitioner at his foreign address, proceeded to issue non bailable warrants and thereafter proclamation proceedings against him. It is further submitted that the petitioner was not present in India at any point during the period when the service of non-bailable warrants was attempted. Despite the executing officer's specific report confirming that the petitioner was residing abroad, the learned Magistrate, proceeded to issue a proclamation at the old address of the petitioner in India. The petitioner visited India from 03.10.2022 to 11.12.2022, and again from 06.03.2024 to 26.05.2024, but during both visits, he had no knowledge of any proceedings declaring him a Proclaimed Offender. Learned counsel for the petitioner further submits that the petitioner is coming back to India and is ready and willing to join the trial.

3. Status report dated 13.07.2025 has been filed by learned State counsel, in Court today, which is taken on record. 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 her 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 at Canada at the time when non-bailable warrants and even proclamation was issued against him, which were received back unserved.

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. Learned trial Court has not made any effort 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 28.11.2023 (Annexure P-10), 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 28.11.2023 (Annexure P-10) is set aside/quashed **subject to payment of Rs.50,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh.** However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, and in case an appropriate application alongwith receipt of cost, is moved by the petitioner, trial Court concerned would release the petitioner on the bail bonds and surety bonds to its satisfaction. However, in case he fails to appear before the trial Court on the said date, this order would be of no avail to the petitioner.

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

21.07.2025

Kavita

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No