



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.34635 of 2024 (O&M)
Date of decision: 29.01.2025

Kashmir Kaur @ Bholi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Arora, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

CRM-2880-2025

Prayer in the instant application filed under Section 528 of BNSS, 2023 is for preponing the date of hearing fixed in the main petition.

For the reasons stated in the application, the same is allowed and the main case, which is listed for hearing on 22.04.2025, is taken up today.

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1. The present petition has been filed under Section 528 of BNSS, 2023, for quashing of order dated 08.04.2024 passed by learned Additional Sessions Judge, Tarn Taran in FIR No.0084 dated 18.04.2018 registered under Sections 324, 452, 427, 506, 148, 149 IPC (Sections 379, 379-B, 201 IPC added later on) at Police Station Sadar



Tarn Taran, District Tarn Taran, vide which the petitioner was declared as proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the petitioner was granted the concession of anticipatory bail by this Court on 03.10.2018 passed in CRM-M No.29255 of 2018 and she was regularly appearing before the learned trial Court but due to miscommunication between the petitioner and her counsel, wrong date was noted down by the petitioner. Thereafter, on 17.04.2023 the petitioner could not appear before the learned trial Court and on account of non-appearance, her bail bonds/surety bonds were cancelled and forfeited to the State and non-bailable warrants along with notice to her surety were issued. Thereafter, proclamation proceedings were also initiated against the petitioner vide order dated 31.05.2023 (Annexure P-6).

3. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, she has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner due to miscommunication and act of noting down the date wrongly.

4. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.



6. Mr. Sandeep Godara, DAG, Punjab, who is present in the Court, accepts notice on behalf of respondent – State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure her presence.

7. 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.

8. 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.

9. 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 the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the

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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.

10. 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 herself come forward and has undertaken to appear before the learned trial Court on each and every date of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 08.04.2024, vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

12. The petitioner is directed to appear before the learned trial Court within a period of 02 weeks from today and on doing so, she shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with All India Pingalwara Charitable Society, Amritsar for wasting precious time of the Court.

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

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14. However, in case, the petitioner fails to surrender before the learned trial Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

(HARPREET SINGH BRAR)
JUDGE

29.01.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No