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

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CRM-M-33443-2025(O&M)

Date of Decision: 25.07.2025

Kundan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Vaibhav Sehgal, Advocate and
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 04.10.2010 (Annexure P-6), whereby the petitioner has been declared a 'Proclaimed Offender' in case CHI-85767 dated 15.07.2013, arising out of FIR No.109 dated 15.10.2009, registered under Sections 406 & 498-A of the *Indian Penal Code* and all the consequential proceedings arising therefrom.

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 wife of the petitioner. During the course of trial, the learned trial Court issued non-bailable warrants for procuring the presence of the petitioner, but the same were returned as unexecuted on two occasions. On 31.03.2010, the serving officer disclosed before the learned Magistrate that the petitioner was residing abroad. Yet the learned trial Court, instead of serving the petitioner at his foreign address, proceeded to issue fresh non bailable warrants and

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thereafter proclamation proceedings against him at the old address of the petitioner in India. It is submitted that the petitioner was in Canada at the time registration of the FIR on 15.10.2009, and the fact that the petitioner had never returned from Canada since 07.02.2007 can be seen from the copy of the passport of the petitioner annexed as Annexure P7. Therefore, there is a manifest error in the order declaring the petitioner as a proclaimed offender, since the same was not done in compliance to the mandatory provisions of Sections 82 & 105 IPC. Learned counsel for the petitioner further submits that the petitioner is ready and willing to join the trial and thus, prays for quashing of the impugned order.

3. Status report dated 12.07.2025 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

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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 ***“Mehtar 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

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impugned order dated 04.10.2010 (Annexure P-6), 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 04.10.2010 (Annexure P-6) 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 trial Court concerned within a period of four weeks, and in case, an appropriate application alongwith receipt of cost, is moved by the petitioner, the learned trial Court concerned would release the petitioner on the bail on furnishing bail & surety bonds to its satisfaction. However, in case he fails to appear before the learned trial Court, this order would be of no avail to the petitioner.

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

25.07.2025
Ramandeep Singh

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No