

CRM-M-38048-2024 (O&M)

-1-

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-38048-2024 (O&M)

Date of Decision: 20.01.2025

LOVEPREET SINGH @ LOVE

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Malkiat Singh Hundal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 528 of BNSS seeking quashing of order dated 22.05.2024 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Amritsar in FIR No. 30 dated 20.01.2022 registered under Section 61 of Punjab Excise Act registered at Police Station Maqboolpura, District Amritsar.

2. The following order was passed on 07.08.2024:

"Petitioner seeks quashing of impugned order dated 22.5.2024 (Annexure P-4) vide which he has been declared a 'proclaimed person'.

A perusal of the photocopy of statement dated 07.03.2024 (Annexure P-5) of serving official Sandeep Singh shows that he has stated that he had visited the premises on 07.02.2024 for the purpose of effecting proclamation and had effected the same. However, in the later part of the statement, he has proved the proclamation

**CRM-M-38048-2024 (O&M)****-2-**

report dated 07.03.2024 as Ex.PB/1. It remains unexplained as to why the proclamation report was prepared one month later i.e. on 07.03.2024 when proclamation had been effected on 07.02.2024.

Learned counsel for the petitioner is directed to place on record a fresh copy of statement of the serving official and also to place on record a report of the serving official (Ex.PB/1) so that the aforesaid inconsistency may be clarified.

List again on 12.9.2024.

Needless to mention, it shall always be open to the petitioner to surrender before the trial Court and to apply for grant of regular bail.”

3. Learned counsel for the petitioner submits that the impugned order has been passed without following the mandate of Section 82 (1) of Cr.P.C. in its letter and spirit by the trial Court. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. I have heard learned counsel for the petitioner and perused the record of the case with his 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

**CRM-M-38048-2024 (O&M)****-3-**

procedure must 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 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 above, the impugned order dated 22.05.2024 (Annexure P-4) 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 two 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 *All Indian Pingalwara Charitable Trust, Amritsar*, for wasting precious time of the Court.

9. The present petition is disposed of accordingly.

20.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No