



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

CRM-M-36781-2025 (O&M)

Date of Decision: 16.07.2025

GURSHARAN SINGH JOHAL

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navraj Singh Mahal, 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 17.02.2014 (Annexure P-6) passed by learned Additional Chief Judicial Magistrate, Jalandhar vide which the petitioner has been declared as absconder from law as per provision under Section 82/83 of Cr.P.C. (proclaimed offender) in case bearing FIR No. 46 dated 08.03.2012 registered under Sections 323, 324, 34 of Indian Penal Code (for short 'IPC') at Police Station Sadar Jalandhar.

2. FIR(supra) was registered on the statement of Avtar Singh who stated that on 05.03.2012, he was present at his well. Then at about 6.30 PM he saw that in the passage of their well around which the boundary walls were constructed, were being demolished by Gursharan Singh (petitioner herein), Makhan Singh and Harjit Kaur. Thereafter, the complainant called them from a distance as to what they were doing. Thereafter, the petitioner along with Makhan Singh, while carrying *kirpan* and *datar* in their hands, came running



towards the complainant and gave two *datar* blows to him, which hit him on his left and right side of the head. Thereafter, Makhan Singh also gave *kirpan* blow upon the complainant's right knee and the petitioner pushed the complainant, due to which he fell down and suffered injuries. Thereafter, the complainant raised hue and cry and the assailants ran away from the spot along with their weapons and while going, they had also stolen his mobile phone and some money. On the basis of aforesaid allegations, FIR(supa) was registered.

3. Learned counsel appearing for the petitioner *inter alia* contends charges in the said FIR were framed on 22.01.2013 and the case was fixed for 06.04.2013. On 06.04.2013, the present petitioner could not appear before the learned trial Court and non-bailable warrants were issued against him vide order dated 06.04.2013 and the case was adjourned to 07.08.2013. On 07.08.2013, non-bailable warrants issued against the petitioner were not received back and fresh non-bailable warrants were issued against the petitioner for 07.11.2023. Thereafter, again the non-bailable warrants were received back unserved and proclamation under Section 82 Cr.P.C. was issued against him vide order dated 07.11.2013. Proclamation issued against the petitioner was effected on 14.01.2014 and the serving official got recorded his statement on 22.01.2014, although the mandatory period of 30 days has not lapsed. Thereafter, the petitioner was declared as absconder from law vide impugned order dated 17.02.2014 (Annexure P-6). Learned counsel further contends that petitioner was declared as absconder from law 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 were never served to the petitioner. Further, Learned Counsel submits that during the pendency of trial, co-accused Makhan Singh died and accordingly, vide order dated 03.09.2015, proceedings against him were abated, and another co-accused Harminder Kaur was acquitted of the charges framed against her, vide judgment dated 05.01.2018 passed by the Learned Judicial Magistrate 1st Class, Jalandhar (Annexure P-7). Similarly, in the cross version case registered by petitioner against the complainant and other co-accused, learned Trial Court has also acquitted them vide judgment dated 05.01.2018 (Annexure P-8). Furthermore, during the pendency of Trial, compromise between the parties effected and a petition bearing no. CRM-M-31868 of 2017 for quashing of the FIR (*Supra*) on the basis of compromise was filed before this Court. However, the petition was dismissed as infructuous vide order dated 01.03.2018, since the parties had already been acquitted by the learned Trial Court.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. AG Punjab, who is present in the Court, accepts notice on behalf of official respondents and 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.

6. 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.

7. 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.

8. 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 is mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 17.02.2014 (Annexures P-6) vide which the petitioner was declared absconder from law as per provision under Section 82/83 of Cr.P.C., 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. 25,000/- to be deposited with the ***All Indian Pingalwara Charitable Society Jalandhar Branch, Makdoom Pura Dhobi Mohalla, Jalandhar***, for wasting precious time of the Court.

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

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

16.07.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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