

2025:PHHC:016874



295 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43248-2024
Date of Decision:**04.02.2025**

Nittan Kumar @ Nitin Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S. Rehan, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 17.11.2022 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Gurdaspur in case FIR No.08 dated 09.02.2022 under Section 420 of IPC, 1860 and Section 13 of the Punjab Travels Professionals (Regulation) Act, 2013 registered at Police Station Kahnuwan, District Gurdaspur whereby the petitioner was declared as proclaimed person.

2. Learned counsel for the petitioner, *inter alia*, contends that petitioner is a resident of village Johal, Tehsil Dasuya, District Hoshiarpur and he was not aware about the registration of the FIR (supra) at Police Station Kahnuwan, District Gurdaspur. He further submits that summons and arrest warrants were never served upon him and the reports prepared on the same are not correct. Therefore, he could not appear on 17.11.2022 and on that date, the

trial Court declared the petitioner as proclaimed person. The concerned Court has not recorded his satisfaction that petitioner is evading his arrest and concealing himself from the process of law. Aggrieved by the impugned order dated 17.11.2022 (Annexure P-2), the petitioner has approached this Court by way of instant petition.

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

4. Mr. Rishabh Singla, AAG, Punjab opposes the prayer made by the learned counsel for the petitioner 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 17.11.2022 (Annexure P-2), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the All India Pingalwara Charitable Society Regd., Jalandhar Branch at Jalandhar for wasting precious time of the Court. The petitioner is directed to surrender before the concerned Court within a period of 02 weeks from today and shall move an application for bail and on doing so, he shall be released on bail on furnishing of fresh bail bond and surety bond to the satisfaction of the Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

10. The receipts of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to grant bail

to the petitioner only upon verification of the payment of said costs.

11. 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.

12. Petition stands disposed of.

04.02.2025
Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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