



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

CRM-M-41041-2025

Date of decision:19.08.2025

SUKHWINDER SINGH

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Shergill, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, for quashing of impugned order dated 01.09.2023 (Annexure P-1) passed by Judicial Magistrate 1 Class, Ludhiana, whereby, proclamation proceedings have been started under Section 82 of the Cr.P.C., in case bearing no. CHI/1049/2020 titled as "State vs. Sukhwinder Singh etc." pursuant to FIR No. 143 dated 09.12.2018 (Annexure P-2) under Sections 420, 406, 468 and 471IPC registered at P.S. Jodhan, District Ludhiana, alongwith all other consequential proceedings arising therefrom.

2. Learned counsel for the petitioner inter alia submits that the petitioner was in judicial custody in FIR No. 94 dated 17.09.2022 under Sections 419, 420, 465, 467, 467, 471, 120-B IPC (Section 406 IPC added and Sections 419, 465, 467, 468, 471, 120-B IPC deleted later on) vide DDR No. 16 dated 12.11.2022 registered at Police Station Kiratpur Sahib, District Roopnagar, Annexure P-1. Learned trial Court on 23.09.2022 issued

bailable warrants against the petitioner, despite notice not being issued, subsequently non-bailable warrants were issued against the petitioner, wherein even bailable warrants were not served upon him. He further insists upon the fact that impugned order dated 01.09.2023, Annexure P-1, has been passed for the sole reason of non-execution of bailable and non-bailable warrants.

3. Learned State counsel submits that the petitioner was fully aware of the proceedings going on against him and he intentionally and deliberately remained absented from the proceedings which has caused delay in the trial proceedings. He further submits that though he cannot dispute the factum of petitioner being in judicial custody in another FIR, but, this very fact was never brought before the trial Court at the time it proceeded for issuance of bailable/non-bailable warrants and subsequently initiated the proclamation proceedings under Section 82 Cr.P.C..

4. I have heard learned counsel for the parties and have carefully gone through the record with their able assistance.

5. Perusal of the record makes it crystal clear that it is a matter of admitted fact that the petitioner was in judicial custody since 18.09.2022 in FIR No. 94 (supra). The FIR in question pertains to Police Station Jodhan, District Ludhiana registered under Section 420, 406, 468 and 471 IPC and under these circumstances neither the bailable nor non-bailable warrants could be executed, and having no option left, trial Court decided to proceed the proclamation under Section 82 Cr.P.C. The fact also remains to be noticed here that admittedly the petitioner was never served with

bailable/non-bailable warrants and the notice issued from 06.09.2021 to 02.08.2022 were never received back served or otherwise by the trial Court. In view of the above, the act of absence from the trial Court proceedings to some extent cannot be termed to be intentional or deliberate on the part of the petitioner who was lodged in judicial custody in the another FIR.

6. In view of the above, once it is clear that the act of absence by the petitioner is neither intentional nor deliberate, rather due to circumstances, which are beyond his control, notice issued by the trial Court from 06.09.2021 to 02.08.2022 as is evident from the zimni orders, Annexure P-4 (Colly.), he was never served since these notices were never received back served or otherwise. In view thereof, issuance of process under Section 82 Cr.P.C. is unjust and unfair wherein trial Court and even further executing agency of bailable and non-bailable warrants ought to have arrest the petitioner which was already in the judicial custody at District Jail Ludhiana and this Court cannot believe that the State agency is so helpless and handicap that it could not trace out the whereabouts of the petitioner.

7. In view of the discussion hereinabove, impugned order dated 01.09.2023 is quashed and, petitioner shall surrender before the trial Court within a period of one week from today. However, the peitioner cannot be exonerated of his conduct of not informing the trial Court about his involvement and arrest in another FIR during the pendency of the proceedings in the instant case, for which trial has been delayed by more than 04 years, petitioner is to pay compensatory penalty of Rs.20,000/- in the



Punjab & Haryana High Court Bar Clerk's Association for causing unwarranted delay in the trial proceedings.

8. However, the aforesaid order would be subject to fulfillment of undertaking given before this Court on behalf of the petitioner that he will surrender before the trial Court within a week, if any application seeking bail is moved by the petitioner, the same be considered by the Court below preferably on that very day in accordance with law.

9. The amount so deposited by the petitioner shall not be construed as cost for this order but penalty for stalling the court proceedings by evading himself from trial for a long time.

10. The petition stands disposed off in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

19.08.2025

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