

2025:PHHC:169519



124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43631-2025 (O&M)
Date of Decision: 04.12.2025

Harmandeep Singh Toor

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Ms. Amandeep Kaur, Advocate and
Mr. Gurjeet Singh, Advocate and
Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, DAG, Punjab.

AARADHNA SAWHNEY, J. (ORAL)

CRM-48196-2025

By virtue of the present application, applicant prays for placing on record documents as Annexure P-12 and P-13. In view of the reasons given therein, application is allowed. Documents are taken on record subject to all just exceptions.

CRM-M-43631-2025

1. Present petition under Section 528 of BNSS has been filed by petitioner through his GPA holder, praying therein that Calendra No.182 of IPC dated 09.11.2017 registered as CHI 312 dated 29.11.2017 be quashed. Petitioner has also assailed the legality of the order dated 20.11.2019 (Annexure P-8) passed by the then ACJM, Sangrur, vide which he (P) was declared as 'Proclaimed Person'.

2. Learned counsel for the petitioner submits that petitioner and his parents were falsely summoned in the Calendra u/s 182 IPC. Parents of the petitioner, who were in India, appeared before the Court and were granted the concession of bail by the learned ACJM, Sangrur vide order dated 06.02.2018. On the next date of hearing, summons issued to procure presence of the petitioner, which were received back with the report that he is residing in New Zealand. The Investigating Officer was directed to file/place on record the exact address of petitioner in New Zealand. While referring to the copies of the interim orders appended along with the case file, learned counsel contends that the case remained pending for said purpose for several dates. There is nothing on record to indicate that correct address of petitioner, who was stated to be residing in New Zealand, was ever furnished. In routine, fresh non-bailable warrants were issued to procure presence of the petitioner for 01.03.2019. Thereafter, the case also remained pending for adjudicating of application u/s 311 Cr.PC, which was finally allowed on 11.06.2019. On the next date of hearing i.e. 02.08.2019 without there being any specific report that the petitioner is intentionally avoiding to appear before the Court, learned JMJC concluded that the presence of the petitioner could not be procured through ordinary process and initiated proclamation proceedings for 30.08.2019. On the said day i.e. 30.08.2019 the case was again adjourned to 02.09.2019 regarding statement of serving constable and for consideration on charge. In the order dated 02.08.2019, no date was given by learned Magistrate for appearance of the petitioner-accused. The case was adjourned to 30.08.2019, when statement of executing constable was not recorded and the case was simply adjourned to 02.09.2019. Perusal of the statement of the executing constable recorded on 02.09.2019 reveals that the executing constable also did not mention as to when specifically he had visited the house of the petitioner.

Learned counsel further submits that when there was a specific report with the learned Magistrate that petitioner has left for New Zealand, it was incumbent on the part of the learned Magistrate to procure the presence of the petitioner in accordance with the provision of Section 105 Cr.PC (now Section 110 BNSS). Thus, on the face of it, the proclamation order dated 20.11.2019 being not in 'sync' with law, is illegal. It is further the contention of the learned counsel that now the petitioner is wanting to return back to India and join the trial proceedings. Learned counsel further intimates that on coming to India, petitioner would surrender before the Court concerned. However, he requests that the petitioner may kindly be granted adequate protection from his arrest, thereby enabling him to surrender before the learned trial Court/Illaq Magistrate concerned.

In view of the submissions made hereinabove, learned counsel submits that a lenient view be taken in favour of the present petitioner, who undertakes to appear before the trial Court.

3. Heard. Before proceeding further, let us carefully go through Section 105 Cr.P.C, which reads as under:-

“105. Reciprocal arrangements regarding processes.

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

issued by it shall be served or executed at any place, -

(i) xxxxxxxx

(ii) in any country of place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and sent to such authority for transmission, as the Central Government may, by notification, specify in this behalf;]

(2) Where a Court in the said territories has received for service or execution -

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or

(d) a search-warrant,

[issued by -

(i) a Court in any State or are in India outside the said territories;

(ii) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where -

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by Sections 80 and 81;

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in

accordance with the procedure prescribed by Section 101 :

[Provided that in a case where a summons or search warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.]”

In the case in hand, admittedly, it was intimated to the trial Court that the petitioner has left for foreign land. In this eventuality, trial Court should have adhered to the procedure so prescribed under Section 105 (1)(ii) Cr.P.C., rather non-bailable warrants were repeatedly issued on the residential address of petitioner in India and based upon the report that non-bailable warrants had been received back unexecuted, learned trial Court presumed that petitioner is deliberately not appearing and thus, proclamation proceedings were initiated for 30.08.2019.

As noted above, copies of the interim orders appended along with petition reveal that executing constable visited the house of petitioner in India on 22.08.2019. Thus, 30 days time period was not granted to petitioner to put in his appearance from the date of publication. Hence, even the requirement of Section 82 Cr.PC was not complied with.

For want of compliance of the procedure so mentioned in Code of Criminal Procedure, proclamation order dated 20.11.2019 is hereby set aside. In view of the prayer made by learned counsel, coupled with the fact that the petitioner is ready and willing to return to India and to surrender before the learned trial Court/Illaq Magistrate concerned, and that, the underlying object behind declaring any person a “*Proclaimed Person/Offender*” is to secure his presence for facing trial, this Court deems it appropriate to grant an opportunity to the petitioner to surrender before the learned trial Court/Illaq Magistrate

concerned only upto 22.12.2025 and till then the arrest of petitioner shall remain stayed and he shall not be arrested at the Airport concerned, upon his arrival from abroad.

However, it is clarified that if the petitioner does not, comply with aforesaid direction and surrender before the learned trial Court/Illaq Magistrate concerned upto the stipulated period, the protection regarding his arrest, as granted hereinabove, shall stand *ipso facto* vacated, without any further reference to this Court.

It is also clarified that the moment the petitioner surrenders, this order granting interim protection would cease to operate, and thereupon, the learned trial Court/Illaq Magistrate concerned shall proceed further in accordance with law. No observations made hereinabove shall have any bearing on the merits of the bail application, which shall be decided, as per law.

Accordingly, the instant petition stands disposed of.

04.12.2025
Parveen kumar

(AARADHNA SAWHNEY)
JUDGE

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