



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

303+138

CRM-M No.46325 of 2024 (O&M)

Date of decision: 23.01.2025

Karan Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Godara, Advocate
for the petitioner.

Mr. Sandeep Godara, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

CRM No.2809 of 2025

Prayer in the instant application filed under Section 528 of
BNSS, 2023 is for placing on record the zimini orders as Annexure P-6.

Allowed as prayed for subject to all just exceptions.

CRM-M No.46325 of 2024

1. The present petition has been filed under Section 528 of
BNSS, 2023, for quashing of order dated 22.03.2024 passed by learned
Chief Judicial Magistrate, Tarn Taran in complaint No.COMA/51/2019
dated 06.08.2019, titled as “State through Gurpreet Singh, Insecticide
Inspector vs M/s. New Ballu Kheti Store and others” whereby the
present petitioner was declared as proclaimed person.

2. The brief facts of the case are that M/s. New Ballu Kheti
Store, located in VPO Sarai Amanat Khan, Tehsil and District Tarn
Taran, was inspected by the respondent No.2 – Insecticide Inspector.
During the inspection, the stock was checked, revealing 204 packets,

2025:PHHC:010161



each containing 5 kgs of Cartap Hydrochloride 4% GR, branded as NIDAN. A sample was taken for analysis, which subsequently showed that the product was misbranded, containing only 2.83% of Cartap Hydrochloride according to the laboratory report and thereafter, the complaint has been filed.

3. Learned counsel for the petitioner, *inter alia*, contends that on filing of the complaint, the present petitioner was subsequently summoned by the learned trial Court. He further submits that the petitioner was never served with the summons or warrants issued by the learned trial Court, and as a result, he was wrongly declared as proclaimed person on 22.03.2024. Aggrieved by the said impugned order dated 22.03.2024, the petitioner has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court. Lastly, learned counsel for the petitioner submits that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

4. Notice of motion.

5. Mr. Sandeep Godara, DAG, Punjab, who is present in the Court, accepts notice on behalf of respondent No.1 – State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the learned trial Court intentionally and deliberately and, therefore, having left with no other option, the proclamation was issued to secure his presence.

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 (CrI.) 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

2025:PHHC:010161



date of hearing.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 22.03.2024, vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set-aside.

10. The petitioner is directed to appear before the learned trial Court within a period of 04 weeks from today and on doing so, he shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.5,000/- to be deposited with PGI Poor Patient Welfare Fund, for wasting precious time of the Court.

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

12. 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.

(HARPREET SINGH BRAR)
JUDGE

23.01.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No