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

CRM-M-51509-2024

Date of decision: 28.01.2025

Ish Kumari

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarun Hans, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This second petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking setting aside/quashing of order dated 26.04.2022 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Hisar, vide which the petitioner has been declared as proclaimed person in complaint bearing NACT No.12008 of 2018 dated 06.08.2018 titled as 'Balwant Jain Vs. Ish Kumari' (Annexure P-1) and all other subsequent proceedings arising therefrom. Earlier petition was dismissed as withdrawn and liberty was granted to the petitioner to file fresh petition with better particulars.

2. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was on bail and was regularly appearing before the learned trial Court but on 26.04.2022, she could not put in appearance before the learned trial Court as she was in Delhi for her treatment and on account of her absence, the trial Court declared the petitioner as proclaimed person.

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Aggrieved by the said impugned order dated 26.04.2022 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading her arrest, is erroneous. Ultimately, vide impugned order dated 26.04.2022 (Annexure P-6), the petitioner has been declared as proclaimed person. 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.

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

5. Notice of motion.

6. Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice for respondent No.1 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 her presence.

7. 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.

8. 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.

9. 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 herself. 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.

10. 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 herself come forward and has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 26.04.2022 (Annexure P-6) vide which the petitioner was declared as proclaimed person, is hereby set aside.

(HARPREET SINGH BRAR)

JUDGE

28.01.2025

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