



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

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CRM-M-53806-2025 (O&M)

Date of decision: 23.09.2025

Kanwaljit Singh Brar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Ms. Ramta Chowdhary, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for quashing of order dated 23.01.2024 (Annexure P-10), passed by the Court of learned Sessions Judge, Faridkot in case arising out of FIR No. 121 dated 27.06.2021, registered under Sections 377 and 34 of IPC and Sections 6 and 17 of the POCSO Act, 2012 at Police Station Sadar Faridkot, District Faridkot, whereby the petitioner had been declared a proclaimed offender.

2. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in the aforementioned case. The petitioner was exonerated by the police and untraced report was filed before the Court. The matter was again investigated by the police and a cancellation report was presented. However, learned Sessions Judge, Faridkot took cognizance of the matter under Section 190(1)(b) of Cr.P.C. and notices were issued to the petitioner

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and other co-accused. However, prior to that, the petitioner had gone to Canada under an impression that he had been exonerated in the case. It is further argued that he was never served with any notice/warrants issued by the learned trial Court at his ordinary place of residence. The petitioner had been declared a proclaimed offender without following the proper procedure prescribed under Section 82 of Cr.P.C. He is ready to join the proceedings. Hence, it is urged that the impugned order is liable to be set aside.

3. Notice of motion.

4. Learned Deputy Advocate General, Punjab, who has advance notice of the petition, has resisted the petition by submitting that there is no infirmity in the impugned order and the petitioner has rightly been declared a proclaimed offender as he was running away from the process of Court. It is, thus, urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

6. On giving due deliberations to the contentions as raised by learned counsel for the parties and on an overall perusal of the orders passed by the learned trial Court from the date of initiating proceedings under Section 82 Cr.P.C. as against the petitioner till the date of declaring him a proclaimed offender, I am of the considered opinion that the impugned order dated 23.01.2024 suffers from some illegalities and is liable to be quashed with all the consequential proceedings arising therefrom.

7. After going through the material placed on record as well as the copies of zimni orders passed by the learned trial Court, it is revealed that on 14.12.2023, since the non-bailable warrants issued against the petitioner were

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received back unserved, the learned trial Court had ordered for issuance of proclamation against him for 23.01.2024. A bare perusal of this order shows that the learned trial Court before ordering for publication of proclamation has not recorded its proper satisfaction that the petitioner had absconded or was concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence, which was in violation of the provisions of Section 82(1) of Cr.P.C. Reliance in this regard can be placed upon ***Rohit Kumar Vs. State of Delhi : 2008 Crl. J. 2561.***

8. Further, a perusal of order dated 14.12.2023 itself shows that it was in the knowledge of the learned trial Court that the petitioner was residing in Canada. However, no efforts whatsoever were made by the Court concerned to know about the address of the petitioner in abroad, where the process could be sent to him. No letter to Ministry of External Affairs qua service of notice/warrants/proclamation against the petitioner is shown to have been written by the trial Court. As such, it can reasonably be presumed that the process never reached the petitioner and hence, he had no occasion to conceal himself. As such, the action of the trial Court by switching to the proclamation proceedings under Section 82 Cr.P.C. can itself be stated to be bad in the eyes of law. Reliance in this context can be placed upon ***Manjit Kaur vs. State of Punjab : 2013 SCC Online (P&H) 8663.***

9. Accordingly, in view of the discussion as made above and also in view of the ratio of law as laid down in above cited authorities, the present petition is allowed and the impugned order dated 23.01.2024 (Annexure P-10), passed by the Court of learned Sessions Judge, Faridkot in case arising out of FIR No. 121 dated 27.06.2021, registered under Sections 377 and 34 of

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IPC and Sections 6 and 17 of the POCSO Act, 2012 at Police Station Sadar Faridkot, District Faridkot, whereby the petitioner had been declared a proclaimed offender, is quashed with all consequential proceedings arising therefrom.

10. However, the petitioner is directed to surrender before the Court concerned within a period of four weeks, subject to order for grant of anticipatory bail, if any passed on his petition to be filed under Section 482 of BNSS. In the absence of any order for grant of anticipatory bail and on such surrender, the petitioner shall be liable to be remanded to judicial custody subject to any order for grant of regular bail to be passed by the concerned Court in accordance with law.

11. Needless to observe that in case any application is filed before the concerned Court for grant of regular bail, then the concerned Court shall be bound to dispose of the same expeditiously and that nothing in this order shall be treated as expression of any opinion on merits so as to bind or influence the concerned Court in disposal of the same.

12. Till the appearance of the petitioner before the learned trial Court, his arrest shall remain stayed.

13. It is made clear that in case the petitioner fails to appear before the learned trial Court within the stipulated time, this petition shall be deemed to be dismissed.

23.09.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*