

**HIGH COURT OF PUNJAB & HARYANA****Date of Decision: February 01, 2024****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Crl. Misc. No. M-5082 of 2024

**Vakul Khullar @ Wakul Khullar                      .....Petitioner****versus****State of Punjab    .....Respondent****Legislation:**

Section 482 Cr.P.C.

Sections 174-A, 447, 511, 120-B of the IPC

Section 82 Cr.P.C.

**Subject:** Petition for quashing non-bailable warrants issued against the petitioner, considering the unintentional absence from court due to unavoidable circumstances.**Headnotes:**

Quashing of Non-Bailable Warrants – Unintentional Absence of Petitioner – Petitioner approached under Section 482 Cr.P.C. to quash non-bailable warrants issued for non-appearance in FIR No. 202 dated 18.09.2021 under Section 174-A IPC – Non-appearance due to urgent travel to Canada and later for work permit renewal – Bail granted earlier under anticipatory bail application – Non-bailable warrants set aside considering the petitioner's voluntary appearance and commitment to adhere to trial court proceedings [Paras 1-2, 11-12].

Legal Principles on Issuance of Non-Bailable Warrants – Criteria for Issuing Proclamation and Warrants – Reference to judgments 'Major Singh @ Major Vs. State of Punjab' and 'Sonu vs. State of Haryana' highlighting the need for recording satisfaction before issuance of process under Section 82 Cr.P.C. – Proclamation deemed nullity in case of noncompliance with

mandatory conditions specified in Section 82 (2) Cr.P.C. – Purpose of warrants and proclamation is to ensure accused's presence in court [Paras 9-10].

Consideration of Personal Liberty – Balancing Personal Liberty and Social Interest – Importance of following lawful procedure for curtailing personal liberty under Article 21 of the Constitution – Procedure must be fair, just, and reasonable [Para 9].

Disposal of Petition – Impugned order set aside, petitioner directed to appear before trial court within two weeks and granted bail upon furnishing bail and surety bonds, with costs imposed for court time wastage [Para 12-13].

#### **Referred Cases:**

- Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506
- Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319

#### **Representing Advocates:**

**Mr. Lakshay Bector for petitioner**

**Mr. Subhash Godara, Addl. A.G. Punjab for respondent**

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#### **Harpreet Singh Brar, J . (Oral)**

1. The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of impugned order dated 05.12.2023 (Annexure P-6) passed by learned Sub Divisional Judicial Magistrate, Samrala vide which non-bailable warrants were issued against the petitioner in FIR No. 202 dated 18.09.2021 registered under Section 174-A IPC at Police Station Samrala, District Ludhiana.
2. The brief facts of the present case are that one FIR No. 106 dated 15.4.2017 under Sections 447, 511, 120-B of IPC at Police Station Samrala, District Ludhiana was registered against the petitioner on 13.09.2018 and he was regularly appearing before the Court but he had to go to Canada in an urgency without taking permission from the Court as he had received his study visa and thereafter the petitioner did appear before the learned trial Court and was declared Proclaimed Person on 09.07.2019 and FIR (supra) was registered against him under 174-A of the IPC. When the petitioner came back to India,

he moved an application for grant of anticipatory bail before the learned Additional Sessions, Judge Ludhiana and the same was allowed vide order dated 15.11.2022 and the petitioner was directed to join the proceedings within 15 days from the date of order. After 15.11.2022, the petitioner was regularly appearing before the learned trial Court in both the cases but again he had to leave India in urgency for the renewal of his Work Permit due to which non-bailable warrants were issued against the petitioner in FIR No. 106 dated 15.4.2017 under Sections 447, 511, 120-B of IPC at Police Station Samrala, District Ludhiana vide order dated 02.11.2023 and thereafter the petitioner immediately came back to India and moved an application for grant of anticipatory Bail before the learned Additional Sessions Judge, Ludhiana and the same was disposed of on 04.01.2024 with directions to appear before the learned trial Court within 15 days and the same has been extended till 01.02.2024 vide order dated 24.01.2024 but in the meanwhile non-bailable warrants were issued against the petitioner in FIR (supra).

3. Learned counsel appearing for the petitioner submits that the nonappearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he 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 of unintentional non-appearance of the petitioner due to unavoidable circumstances.

5. Notice of motion.

6. Mr. Subhash Godara, Addl. A.G. Punjab, who is present in Court, accepts notice for the respondent and submits that the impugned order has been passed on the sole ground of the absence of the petitioner.

8. 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.

9. 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.

10. 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 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 in nature. Any noncompliance therewith cannot be cured as an 'irregularity' and renders the proclamation as nullity.
11. 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.
12. In view of the aforesaid facts and circumstances, the impugned order dated 05.12.2023 (Annexure P-6) vide which non-bailable warrants were issued against the petitioner is set aside. The petitioner is directed to appear before the Court below within a period of two weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs. 20,000/- to be deposited with the District Legal Services Authority, Ludhiana, for wasting precious time of the Court.
13. The instant petition stands disposed of in above terms.