

**THE COURT OF PARMINDER SINGH RAI,
ADDITIONAL SESSIONS JUDGE, GURDASPUR,
UID-PB00175**

CIS No.	:	CRR/7/2024.
CNR No.	:	PBGD01-002438-2023.
Date of Institution	:	17.11.2023
Date of Decision	:	09.09.2024.

1. Shaukat Ali s/o Farid Ahmed, r/o village Nakki Tehsil Majalti, District Udhampur (J&K).
2. Amir Khan s/o Gulam Rasul, r/o Amara, District Udhampur (J&K)

----Revision-petitioners.

Versus

State of Punjab.

-----Respondent

Revision against the order dated 07.01.2022 passed by the Court Sh. Rachhpal Singh, Ld. CJM Gurdaspur vide which the Ld. Trial Court has declared the revisionist as proclaimed offender.

Present: Sh. S.S. Basra, Advocate, counsel for revision-petitioner
 Sh. Vikram Kashyap, Ld. Addl. P.P for State/respondent

JUDGMENT

1. The instant revision petition has been preferred by revision-petition/applicant against order dated 07.01.2022 passed by the court of Sh. Rachhpal Singh, Chief Judicial Magistrate, Gurdaspur whereby the trial court wrongly declared revision petitioner proclaimed offender.

2. The facts relevant for the disposal of present revision-petition are that neither petitioners were aware about the registration of above case nor the police have not raided their house even single time.

Petitioners belong to poor family and they are not engaged in smuggling

(Parminder Singh Rai, ASJ, Gurdaspur)

of drugs and ammunition as alleged and when they came to know about impugned order in the month of 2022. There is no sufficient evidence on record to connect them with alleged offence.

3. Aggrieved with the aforesaid order passed by the learned Trial Court, revision-petitioners have come up in revision. Record of trial court has also been requisitioned.

4. Learned counsel for the revision petitioner has contended that petitioners were never served with any notice and the order declaring them proclaimed offender has been illegal one.

5. I have heard learned counsel for the parties and have perused the record of this case meticulously with their assistance.

6. Record shows that one application was moved by the investigating agency seeking issuance of non bailable warrants of both petitioners simply on the ground that on 20-05-2021, on the tip of the informant, ASI Kuldeep Singh registered the said case at the police station and took further action as per the orders of the subordinate officers to arrest the accused including his fellow employees. To arrest accused, a naka was held at Madhopur-Jugyal Road where both accused were seen coming on motorcycle Hero Honda Splendor No. JK-07-4652 but they on seeing the police party threw their motorcycle at that place and fled away through Ravi Darya Kot Jammu and Kashmir side. He chased the said two accused along with his police party but said accused managed to escape. The motorcycle thrown away by the accused was taken into possession of the police. After a thorough checking of the kit bag attached to the motorcycle, a box of AK-47 kept in a plastic bag and

20 live cartridges were taken into possession of the police through a separate memo. The narcotic substance was also recovered, which was found to weigh 550-grams and same was seized vide separate memo at the spot. The nominated accused Shakat Ali and Amir Khan were yet to be arrested in the present case and police filed application seeking arrest warrants of aforesaid accused. As such, their non bailable warrants were issued and finally vide order dated 29.09.2021 the Court of Sh. Rachhpal Snigh, the then Ld. CJM, Gurdaspur ordered for issuance of proclamation proceedings in terms of Section 82 Cr.P.C.

7. Section 82 Cr.P.C reads as under:-

“82(1) If any Court has reason to believe whether after taking evidence or not that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

8. So the bare perusal of the aforesaid provision would make it abundantly clear that the Court must have reason to believe that the person against whom warrants of arrest have been issued has absconded or has been concealing himself, so such warrants cannot be executed. Order dated 29.09.2021 vide which process of proclamation has been issued by the trial court does not reflect that the Court came to the conclusion to have reasons to believe or it is satisfied from the process of procuring the presence of accused through warrants of arrest that accused has absconded or their presence cannot be procured or they

concealed themselves to avoid the process of execution of warrants. So when base of the initiation of proclamation has been without any legal basis, so the order dated 07.01.2022 whereby accused were declared proclaimed offenders cannot sustain in the eyes of law.

9. With these observations, this court is of the view that the learned trial court has committed grave error in passing the impugned order and the order is not legally sustainable in the eyes of law. Accordingly, revision-petition is accepted and order dated 07.01.2022 passed by the Court of Sh. Rachhpal Singh, the then Ld. Chief Judicial Magistrate, Gurdaspur is hereby set aside. Trial court record alongwith copy of this judgment be sent back. Revision file be consigned to record room.

Pronounced
09.09.2024
Gurpreet Singh Stenographer-II

Parminder Singh Rai
Additional Sessions Judge
Gurdaspur/UID-PB00175

Shaukat Ali Vs. State

Present: Sh. K.S. Saini, Advocate, counsel for revision-
petitioners
 Sh. Vikram Kashyap, Ld. Addl. P.P for State/respondent

Vide my separate detailed judgment of even date, the
Revision Petition stands allowed. Lower court record be returned
alongwith a copy of this order and revision file be consigned to record
room.

Pronounced
09.09.2024
Gurpreet Singh Stenographer-II

Parminder Singh Rai
Additional Sessions Judge
Gurdaspur/UID-PB00175