



131

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

**CRM-M-48421-2025**

Decided on 01.09.2025

Davinder Kumar @ Davinder Kumar Seth @ Deepak Seth

..... Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL.**

Present: Mr. Naveen Bawa, Advocate  
for the petitioner.

**SHALINI SINGH NAGPAL J.**

\*\*\*\*\*

1. Davinder Kumar @ Davinder Kumar Seth @ Deepak Seth accused in criminal case arising out of FIR No.65 dated 19.04.2017 under Sections 354-A, 354-B, 323, 506, 34 IPC registered at PS Division No.7 (Vardhman) Ludhiana has filed this petition under Section 528 of BNSS, 2023 for quashing order dated 30.08.2024 passed by learned JMIC, Ludhiana, declaring him proclaimed person.
2. Notice of motion.
3. Mr. Kunwarbir Singh, AAG Punjab accepts notice on behalf of respondent-State.
4. Learned counsel for the petitioner submits that initially, after case was registered, petitioner was released on police bail, offence being bailable. Later on, challan was presented in the Court in his absence and he was allowed anticipatory bail vide order dated 04.10.2023 of learned Additional Sessions Judge Ludhiana. He appeared before the trial Court but failed to appear on 13.02.2024. On that date, his bail and surety bonds were



cancelled and forfeited to State and he was summoned through non-bailable warrants. Ultimately, petitioner was declared a “proclaimed person” vide order dated 20.05.2024 of learned JMIC, Ludhiana. He further submits that the order declaring the “petitioner proclaimed” person was illegal, passed without complying with the mandatory provisions under Section 82 Cr.P.C. inasmuch as the proclamation was not publicly read in some conspicuous place of town or village where the petitioner resided nor a copy was affixed at the house of the petitioner. Therefore, on this ground alone, impugned order deserved to be set aside.

5. Learned State counsel has supported the impugned order of learned trial Court submitting that there was no violation of procedure.

6. Section 82 Cr.P.C. which provides for publication of proclamation against a person absconding is reproduced hereunder for the facility of reference:-

*—(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.*

*(2) The proclamation shall be published as follows:-*

*(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*

*(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some*



*conspicuous place of such town or village;*

*(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;*

*(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*

*(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day. 50 1*

*[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.*

*(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]*

7. A co-ordinate Bench of this Court in **CRM-M-41715-2021** titled **“Anita Sharma Vs. State of Punjab”**, date of decision **26.03.2021**,



has summarized the essential requirements of Section 82 Cr.P.C. as under:-

*“(i) Prior issuance of warrant of arrest by the Court is sine qua non for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. (See **Rohit Kumar Vs. State of Delhi**: 2008 CrI. J. 2561).*

*(ii) There must be a report before the Court that the person against whom warrant was issued had absconded or had been concealing himself so that the warrant of arrest could not be executed against him. However, the Court is not bound to take evidence in this regard before issuing a Proclamation under Section 82 (1) of the Cr.P.C.. (See **Rohit Kumar Vs. State of Delhi**:2008CrI. J. 2561).*

*(iii) The Court cannot issue the Proclamation as a matter of course because the Police is asking for it. The Court must be prima facie satisfied that the person has absconded or is concealing himself so that the warrant of arrest, previously issued, cannot be executed, despite reasonable diligence. (See **BishundayalMahton and others Vs. Emperor**: AIR 1943 Patna 366 and **Devender Singh Negi Vs. State of U.P.**: 1994 CrI LJ (Allahabad HC) 1783).*

*(iv) The requisite date and place for appearance must be specified in the proclamation requiring such person to appear on such date at the specified place.*

*Such date must not be less than 30 clear days from the date of issuance an publication of the proclamation. (See*



*GurappaGugal and others Vs. State of Mysore* 1969 CriLJ 826 and *Shokat Ali Vs. State of Haryana*: 2020(2) RCR (Criminal) 339).

(V) Where the period between issuance and publication of the proclamation and the specified date of hearing is less than thirty days, the accused cannot be 4 of 8 declared a proclaimed person/offender and the proclamation has to be issued and published again. (See *Dilbagh Singh Vs. State of Punjab (P&II)*: 2015 (8) R.C.R. (criminal) 166 and *Ashok Kumar Vs. State of Haryana and another* : 2013 (4) RCR (Criminal) 550)

(vi) The Proclamation has to be published in the manner laid down in Section 82 (2) of the Cr.P.C. For publication, the proclamation has to be first publicly read in some conspicuous place of the town or village in which the accused ordinarily resides; then the same has to be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides or to some conspicuous place of such town or village and thereafter a copy of the proclamation has to be affixed to some conspicuous part of the Court-house. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. (See *Pawan Kumar Gupta Vs. The State of W.B.*: 1973 CriLJ 1368). Where the Court so orders a copy of the proclamation has to be additionally published in a



*daily newspaper circulating in the place in which the accused ordinarily resides. Advisably, proclamation has to be issued with four copies so that one each of the three copies of the proclamation may be affixed to some conspicuous part of the house or homestead in which the accused ordinarily resides, to some conspicuous place of such town or village and to some conspicuous part of the Court-house and report regarding publication may be made on the fourth copy of the proclamation. Additional copy will be required where the proclamation is also required to be published in the newspaper.*

*(vii) Statement of the serving officer has to be recorded by the Court as to the date and mode of publication of the proclamation. (See **Birad Dan Vs. State**: 1958 CriLJ 965).*

*viii) The Court issuing the proclamation has to make a statement in writing in its order that the proclamation was duly published on a specified day in a manner specified in Section 82(2)(i) of the Cr.P.C.. Such statement in writing by the Court is declared to be conclusive evidence that the requirements of Section 82 have been complied with and that the proclamation was published on such day. (See **Birad Dan Vs. State**: 1958 CriLJ965).*

*(xi) The conditions specified in Section 82(2) of the 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. (See **Devendra Singh Negi alias***



*Debu Vs. State of U.P. and another 1994 CriLJ 1783 and Pal Singh Vs. The State: 1955 CriLJ 318)*”.

8. Record shows that FIR No.65 dated 19.04.2017 under Sections 354-A, 354-B, 323, 506, 34 IPC was registered at PS Division No.7 (Vardhman). In that case, petitioner was released on bail by the police, offence being bailable. Later on, challan was presented in the Court in his absence and he was declared “proclaimed person”. He moved an application for anticipatory bail under Section 438 Cr.P.C. which learned Additional Sessions Judge, Ludhiana disposed of vide order dated 04.10.2023 directing the petitioner to surrender before learned trial Court/Duty Magistrate within 10 days and to furnish fresh bail bonds to its satisfaction.

9. Thereafter, petitioner surrendered in the Court and was released on bail. It appears that charges were framed in the case and the case was fixed for evidence of the prosecution on 13.02.2024. On that date, petitioner absented his bail bonds and surety bonds were cancelled and forfeited to the State. He was ordered to be summoned through non-bailable warrants for 28.02.2024. On 20.05.2024, learned JMIC, Ludhiana, recorded its considered view that accused Davinder was intentionally avoiding service and had concealed himself. Proclamation under Section 82 Cr.P.C. was ordered to be issued for 30.08.2024. Ahlmad was directed to put a note on proclamation that executing official shall publish proclamation between 15.07.2024 to 31.07.2024.

10. On 30.08.2024, statement of executing Constable was recorded. A period of more than 30 days having elapsed from the date of publication of proclamation (12.07.2024), accused-petitioner Davinder Kumar was declared a proclaimed person.



11. Statement of Sr. Constable Avtar Singh was recorded on 30.08.2024. Copy thereof, annexed with the petition is reproduced hereunder:-

*“Stated that I was entrusted with the proclamation on 27.05.2024 of accused Davinder Kumar son of Naresh Kumar Parshad R/o H. no .6898, St. no 02, Jaswant Nagar, Ludhiana and I affixed one proclamation at his house on the conspicuous place and one on the court notice 12.07.2024 but the accused is evading his arrest and there is no likelihood of his getting arrested. The proclamation is Ex PA and my report is Ex PB”.*

12. As per Section 82(2)(i)(a) of Cr.P.C., notice of proclamation is to be **publicly read** in some conspicuous place of the town or village in which such person ordinarily resides. It also required to be affixed in some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village.

13. It is evident from the statement of Sr. Constable Avtar Singh that the proclamation was not publicly read over in some place of town or village where petitioner resided. The three sub-clauses (a) to (c) in Section 82(2)(i) of Cr.P.C. are mandatory and any violation whereof entails quashing of the order declaring an accused, a proclaimed person. The three sub-clauses (a)-(c) in Section 82 (2)(i) of the Cr.P.C. are conjunctive and not disjunctive, which means that there would be no valid publication of the proclamation unless all the three modes of publication are proved. Evidently, learned trial Court failed to notice the mandate of Section 82(2) Cr.P.C. As such, impugned order dated 30.08.2024 of learned JMIC, Ludhiana, declaring the petitioner a “proclaimed person” cannot be sustained in law



and is hereby set aside and quashed.

14. Be that as it may, there is no illegality in the order dated 13.02.2024 vide which bail/surety bonds of the petitioner were cancelled and forfeited to the State and he was ordered to be summoned through non-bailable warrants.

15. Petitioner is, accordingly, directed to surrender before learned trial Court within a period of 15 days from today and move an application for regular bail which learned trial Court shall decide expeditiously.

16. Till that time, arrest of the petitioner shall remain stayed.

17. Relief granted in this petition is subject to payment of cost of Rs.15,000/- which shall be deposited by the petitioner in District Legal Services Authority concerned. Receipt be produced before learned trial Court.

18. The petition is disposed of in the aforesaid terms.

19. Pending applications, if any, also stands disposed of.

**(SHALINI SINGH NAGPAL)**  
**JUDGE**

**01.09.2025**  
Sumit Singla

Whether Speaking/Reasoned : Yes/No  
Whether Reportable : Yes/No