2026:PHHC:033045
2026:PHHC:033045

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-71330-2025

Akash Talwar @ Amrish Talwar

….Petitioner

versus

State of Punjab

….Respondent

Date of reserve: **February 24, 2026**
Date of Pronouncement/ Decision: **March 05, 2026**
Date of Uploading: **March 05, 2026**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

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

Mr. Adhiraj Singh Thind, AAG Punjab.

*****

SUMEET GOEL, J.

Present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), seeking setting aside of the impugned order dated 28.03.2023 (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby, the petitioner has been declared as proclaimed person, in case FIR No.257 dated 18.12.2019, registered under Sections 61, 78 of the Punjab Excise Act, 1914 and Section 473 of the IPC, 1860, at Police Station Dugri, District Ludhiana.

2. Learned counsel for the petitioner has contended that the impugned order, whereby the petitioner has been declared a proclaimed person, is wholly illegal, arbitrary, and unsustainable in the eyes of law. Learned counsel has argued that vide order dated 27.07.2021 (Annexure P-2), the petitioner was granted concession of anticipatory bail, by this Court. Learned

2026:PHHC:033045

counsel has further allowed that since at the time of grant of aforesaid concession, there was COVID-19 pandemic prevailing, therefore, the petitioner could not appear before the Court below from 06.04.2021 to 05.01.2023, except 05.11.2022 and 30.11.2022. Learned counsel has argued that since there was COVID-19 pandemic, still notices, bailable and non-bailable warrants were issued against the petitioner. Learned counsel has further argued that thereafter, proclamation proceedings were issued, vide notice dated 16.02.2023 requiring the petitioner to appear before the Court below on 20.02.2023. Learned counsel has submitted that statement of serving official was recorded on 28.03.2023, perusal of which reveals that the said proclamation was allegedly effected on 18.02.2023 asking him to appear on 20.02.2023, meaning thereby, only 02 days were given to the petitioner to appear before the Court below. Further, statement of the serving official reveals that the proclamation was not read at conspicuous place whereby the petitioner resides. Learned counsel has argued that there was total non-compliance of provisions of Section 82 of the Cr. P.C. as 30 days period, as prescribed, was not given to the petitioner to appear before the trial Court. Learned counsel has argued that, still the petitioner was declared as proclaimed person, vide order dated 28.03.2023 by the Court below.

2.1. Learned counsel has further argued that, vide order dated 16.09.2022, bail order/ bail/ surety bonds of the petitioner were cancelled and forfeited to the State. However, in pursuance to the order dated 29.01.2026 passed by this Court in the present petition, the petitioner has duly caused appearance before the Court below on 09.02.2026 and furnished requisite bail

2026:PHHC:033045

bonds to the satisfaction of the said Court, whereupon, he was extended the concession of interim bail.

2.2. Learned counsel has argued that, thus, the order declaring the petitioner a proclaimed offender is in gross violation of law and principles of natural justice as there was no deliberate evasion or non-appearance on the part of the petitioner. On the basis of these submissions, learned counsel has prayed that the impugned order is liable to be set-aside being illegal and unjustified and hence liable to be set-aside.

3. Learned State counsel has filed status report by way of an affidavit dated 20.02.2026, in the Court today, which is taken on record. Raising submissions in tandem with the said short reply, learned State counsel has opposed the present petition. While refuting the case set up by the petitioner, detailed arguments were advanced on merits, contending that the offence alleged against the petitioner is serious in nature. Furthermore, it has been submitted by the learned State counsel that the petitioner was granted concession of anticipatory bail by this Court, vide order dated 27.07.2021. Learned State counsel has further submitted that given non-absence of the petitioner, learned trial Court issued bailable warrants against the petitioner, vide order dated 09.08.2022, and thereafter, non-bailable warrants were issued on 16.09.2022, 27.10.2022 and 05.01.2023, but still the petitioner did not turn up to cause appearance before the Court below. Vide order dated 16.09.2022, bail order/ bail/ surety bonds of the petitioner were cancelled and forfeited to the State. Thereafter, proclamation proceedings were initiated against the petitioner and vide impugned order dated 28.03.2023, he was declared as a proclaimed person after following due procedure under Section 82 of the Cr.

P.C. Learned State counsel has further submitted that pursuant to the order dated 29.01.2026 passed by this Court, the petitioner caused appearance before the Court below on 09.02.2026 and furnished requisite bail bonds to the satisfaction of the said Court, whereupon, he was extended the concession of interim bail. Learned State counsel has argued that the learned Court below has followed the procedure as laid-down under Section 82 of the Cr. P.C., 1973 in letter and spirit and no discrepancy whatsoever is forthcoming from the records of the case. Accordingly, dismissal of the instant petition has been prayed for.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The law is well settled that no person can be declared a proclaimed offender/person unless the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973 is strictly and meticulously adhered to. It is trite that the provisions of Section 82 Cr.P.C. are mandatory in nature, and any non-compliance thereof vitiates the entire proceedings. Furthermore, Section 82(1) of the Cr.P.C. clearly provides that before issuing a proclamation requiring a person to appear, the Court must have reason to believe, based on material on record, that such person has absconded or is concealing himself so that the warrant cannot be executed. Further, the proclamation must specify a date not less than thirty days from the date of publication for the accused to appear before the Court.

In the present case, the record reflects that proclamation was issued against the petitioner vide notice dated 16.02.2023 requiring him to appear before the Court below on 20.02.2023. Further, statement of the serving official was recorded on 28.03.2023 (Annexure P-6), wherein he stated that he

had executed the proclamation on 18.02.2023. Thus, the petitioner was afforded only two days' time from the date of alleged publication/execution of the proclamation, which is in flagrant violation of the mandatory requirement of granting not less than thirty days for appearance as stipulated under Section 82 Cr.P.C. Perusal of the statement of the serving official further reveals that, in terms of the provisions of Section 82 Cr.P.C., the proclamation was not read publicly at a conspicuous place of the town or village in which the petitioner ordinarily resides, nor is there any material to demonstrate compliance with the prescribed modes of publication.

5.1. It is worthwhile to mention here that, pursuant to the order dated 29.01.2026 passed by this Court in the present petition, the petitioner duly appeared before the Court below on 09.02.2026, furnished the requisite bail bonds to the satisfaction of the Court and has since submitted to its jurisdiction, whereupon he was granted the concession of interim bail, thereby evidencing his bona fide conduct and absence of any intention to evade the process of law.

6. This Court finds that the course adopted by the Court below is in clear contravention of, and antithetical to, the provisions of Section 82 of the Code of Criminal Procedure, 1973. The Court below has committed a manifest illegality by issuing and acting upon the proclamation without ensuring compliance with the mandatory statutory requirements. The learned Court below, while declaring the petitioner as a proclaimed person, failed to record the requisite judicial satisfaction regarding due execution of the proclamation and proceeded in a mechanical and perfunctory manner, rendering the impugned order legally unsustainable. Such an order being violative of

mandatory provisions of law, cannot be sustained. Section 82 of the Criminal Procedure Code, 1973 reads as under:

> "***82. Proclamation for person absconding.*** *- (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.*
> *[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 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 Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of '***Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319'***, held as under:

> "*9. The essential requirements of section 82 of the Cr.P.C., 1973 for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender may be summarized 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 v. State of Delhi: 2008 Crl. 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., 1973. (See Rohit Kumar v. State of Delhi : 2008 Crl. 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 v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. State of U.P. : 1994 Crl 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 and publication of the proclamation. (See Gurappa Gugal and others v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. State of Haryna : 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 declared a proclaimed person/offender and the proclamation has to be issued and published again. (See Dilbagh Singh v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. 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., 1973. 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., 1973 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 v. 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 Courthouse 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 v. 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., 1973. 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 v. State: 1958 CriLJ 965).

> *(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318).*"

8. It is by now a settled principle of law that prior to issuing a proclamation under Section 82 Cr. P.C., the Court is required to record its satisfaction that the accused, against whom such proclamation is sought, is absconding or is concealing himself with the intention to evade arrest. This foundational and jurisdictional requirement is conspicuously absent in the present case. A perusal of the impugned order dated 28.03.2023 reveals that no such satisfaction has been recorded by the Court below, nor does the record disclose any material which could justify an inference that the petitioner had absconded or was deliberately avoiding his appearance before the Court. Furthermore, the effecting of proclamation was not done as per provisions of Section 82 of the Cr. P.C., resulting in serious prejudice to the petitioner.

9. The provisions of Section 82 of the Code of Criminal Procedure, having serious civil and criminal ramifications *qua* the rights of an accused, particularly affecting his liberty and participation in trial proceedings, cannot be invoked in a casual or cavalier manner. The mandatory requirement of recording satisfaction that the accused has absconded or is concealing himself so that the warrant of arrest cannot be executed, as embodied under Section 82 Cr.P.C., must be scrupulously complied with on the basis of cogent and relevant material available on record. Any non-adherence to this statutory mandate while declaring an accused as a proclaimed offender/person vitiates the proclamation proceedings in their entirety.

10. In the aforesaid backdrop, this Court is of the considered opinion that no useful purpose would be served by permitting the criminal proceedings to continue against the petitioner, which are founded upon an illegal and procedurally flawed proclamation. It is, therefore, a fit and appropriate case for the exercise of inherent powers under Section 528 of the BNSS / Section 482 of the Cr.P.C., so as to prevent abuse of the process of law and to secure the ends of justice.

11. In view of the above findings, and considering the entirety of the facts and circumstances of the present case, the present petition is allowed. Consequently, the impugned order dated 28.03.2023 (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby, the petitioner has been declared as proclaimed person, in case FIR No.257 dated 18.12.2019, registered under Sections 61, 78 of the Punjab Excise Act, 1914 and Section 473 of the IPC, 1860, at Police Station Dugri, District Ludhiana, as well as all consequential proceedings arising therefrom, are hereby quashed.

12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

March 05, 2026
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No