

219 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.55907 of 2023 (O&M)

Date of Decision: 21.12.2023

Darshan Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Sharma, Advocate and
Mr. Nitin Narula, Advocate
for the petitioner.

Mr. Madhur Sharma, AAG, Punjab.

Mr. H.S. Randhawa, Advocate
amicus curiae.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 15.07.2008 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class (D), Amritsar in FIR No.17 dated 27.01.2004 registered under Sections 419, 420, 468, 471 IPC at Police Station Raja Sansi, Amritsar Rural, District Amritsar whereby the petitioner has been declared as Proclaimed Offender.

2. Learned counsel appearing for the petitioner challenges the impugned order on the ground that provisions of Section 82 Cr.P.C. were not adhered to by the learned trial Court while issuing the alleged proclamation, as the petitioner was not given the mandatory 30 days' time to appear from the date of publication of such proclamation at the specified place. The said proclamation was received back unexecuted and thus, the same was issued again for 17.04.2008 and thereafter for 15.07.2008, on which date, vide

impugned order the petitioner was declared as Proclaimed Offender. In support of his contention, he relies upon the judgment of Single Bench of Karnataka High Court passed in *Sri Nithya Shambhavanand @ R. Narayanan Vs. State of Karnataka 2021 (2) KCCR 1808*.

3. Learned State counsel supports the impugned order passed by the learned trial Court by contending that the petitioner has deliberately concealed himself from the process of law and is continuing to do so till today, therefore, he has rightly been declared as Proclaimed Offender.

4. While issuing notice of motion in this petition vide order dated 06.11.2023, this Court observed that in the present case though the petitioner has been absconding and concealing himself from the process of law for 15 long years, surprisingly, no application under Section 83 Cr.P.C. was filed before the concerned Court for obtaining necessary directions for attachment of his property, primary purpose of which is to prevent the accused from absconding or evading the process of law and further to ensure the presence of the accused during trial. Therefore, in the peculiar facts and circumstances of the present case, the Commissioner of Police, District Amritsar and Senior Superintendent of Police, Amritsar (Rural) were directed to furnish following information by way of their respective affidavits:-

- (i) *Number of persons declared proclaimed offenders each year for the last 15 years.*
- (ii) *Number of persons arrested and produced before the jurisdictional courts after being declared proclaimed offender.*
- (iii) *Number of cases wherein proceedings under Section 83 Cr.P.C. were initiated at the behest of State seeking*

direction from the court concerned to attach the property of the proclaimed offender/person.

- (iv) Number of cases wherein action has been taken by the State to initiate proceedings pursuant to issuing of proclamation order under Section 174-A IPC.*
- (v) Whether any special cell has been constituted or periodic exercise was undertaken to arrest accused persons, who have been declared as proclaimed offenders/persons.*

5. In compliance of order dated 06.11.2023 passed in this petition, Mr. Gupreet Singh Bullar, IPS, Commissioner of Police, Amritsar submitted his reply by way of affidavit dated 08.12.2023 and furnished following information:-

Year	POs declared	POs arrested and produced before the Court	Proceedings under Section 83 Cr.P.C.	Proceedings initiated under Section 174-A IPC	Special cell constituted or periodic exercise undertaken to arrest accused persons who have been declared as PP/PO
2008	92	23	0	0	Three CIA Staffs i.e. CIA Staff-1, CIA Staff-2 and CIA Staff-3 are functioning in Commissionerate, Amritsar and Incharges of these CIA Staffs have been entrusted with additional task of making special efforts to arrest proclaimed persons/offenders and submitting reports on daily basis to the concerned official.
2009	134	29	0	3	
2010	124	35	0	0	
2011	101	28	0	1	
2012	174	32	0	3	
2013	186	49	0	2	
2014	178	51	0	6	
2015	243	62	0	6	
2016	249	107	0	6	
2017	265	85	0	6	
2018	251	88	0	11	
2019	191	111	0	19	
2020	81	50	0	4	

2021	103	68	1	10	
2022	171	69	0	7	
2023	280	87	0	14	
Total	2823	974	1	98	

6. A perusal of the table above would depict that since 2008 till 2023, 2823 persons were declared Proclaimed Persons/Offenders, out of which 974 were arrested and proceedings under Section 83 Cr.P.C. were initiated in one case whereas proceedings under Section 174-A IPC were initiated against 98 persons. It is further stated that currently three CIA Staffs i.e. CIA Staff-1, CIA Staff-2 and CIA Staff-3 are functioning in Commissionerate, Amritsar and in-charges of these CIA Staffs have been entrusted with additional task of making special efforts to arrest proclaimed persons/offenders and submitting reports on daily basis to the concerned official. Similarly, the Senior Superintendent of Police, Amritsar (Rural) by way of his affidavit dated 07.12.2023 submitted that there are five Sub Divisions in Amritsar (Rural) i.e. Attari, Ajanala, Majitha, Jandiala and Baba Bakala and in all these Sub Divisions, since 2008 till 16.11.2023, a total of 1096 persons were declared proclaimed persons out of which 553 were arrested and proceedings under Section 174-A IPC were initiated against 257 persons. Furthermore, proceedings under Section 83 Cr.P.C. were not initiated against a single individual.

7. Mr. H.S. Randhawa, Advocate, who was appointed as *amicus curiae*, submits that one of the fundamental foundations of criminal justice system in India is the presence of the accused during the process of criminal trial and if the accused does not put in appearance or joins the criminal proceedings, Chapter VI of Cr.P.C. prescribes the procedure to compel the accused to cause

appearance. The term 'absconding' has not been defined in the statute, however, in the judgment passed by the Hon'ble Supreme Court in ***Jayendra Vishnu Thakur Vs. State of Maharashtra and another (2009) 7 SCC 104***, it has been defined on the basis of dictionary meaning as 'to hide', which means to depart secretly or suddenly, especially to avoid arrest, prosecution or service of process. It is further submitted that there are two peculiar situations; one, where persons are declared Proclaimed Persons/Offenders without prior service of summons or execution of warrants and the second is where people conceal themselves from the process of law with a deliberate intention to delay the trial and thus, are declared Proclaimed Persons/Offenders after due service of summons and execution of warrants. Keeping in view the peculiar facts and circumstances of the present case, where the accused has been concealing himself from the process of law for the last 15 years in the instant case, following suggestions are made to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process.

(i) In cases where the accused is yet to join the proceedings.

The complainant, if available, ought to provide a mobile number as well as the address of the accused, while lodging a police report under Section 154 and 155 Cr.P.C. or filing an application before the Magistrate under Section 156 (3) Cr.P.C. or a complaint under Section 190 Cr.P.C. or a complaint under any statute. Since aadhaar card of each individual is linked to his mobile number, it would be helpful for the concerned agency to effect service of summons/warrants/proclamation upon the accused and further initiate proceedings under Section 83 Cr.P.C.

(ii) In cases wherein accused has joined the proceedings;

- (a) The IO/SHO shall obtain documentary proof of the address disclosed by the accused and append the same with the chargesheet.
- (b) The IO/SHO must ascertain the additional addresses of the accused viz, the permanent or the native place address and if addresses are located in other States, the same shall be verified through a subordinate or by any other means through the local police of the address disclosed.
- (c) In case an accused is a tenant in the property, a copy of the rent deed/rent receipt or a plain paper declaration by the landlord would be a sufficient compliance of this requirement.
- (d) The IO/SHO shall mandatorily ascertain the work profile/job profile of the accused and shall obtain his complete work address and details of his place of work/employer including contact details. In case the accused is found to be in a Government/private employment, the address of the Head Office of his employer shall be obtained apart from requiring such employer to share details with the police/Court in case there is a change of place of employment or termination or removal of accused from employment.
- (e) At the time of arrest, the accused shall share names of at least three blood relatives with their details like address and contact numbers and the nature of relation preferably with documentary proof who can be specifically contacted

in case of issuance of any coercive process against him.

This would also act as a safeguard for the accused as in many instances, the accused ends up being declared a Proclaimed offender despite not having any knowledge.

(f) At the time of arrest or soon thereafter, it shall be mandatory for the accused to submit at least two of the following documents:-

- (i) Passport.
- (ii) Pan Card Copy.
- (iii) Bank Passbook.
- (iv) Credit card with photograph.
- (v) Ration card.
- (vi) Electricity bill.
- (vii) Landline telephone bill.
- (viii) Voter I.D. Card issued by the Election Commission of India.
- (ix) Property Tax Register
- (x) Aadhaar Card.

(g) In case of grant of bail, it shall be mandatory for every accused and every surety as a condition for grant of bail that both the accused and the sureties must necessarily inform the police authorities as well as the Court granting the bail about the change of their residential address while the accused is on bail. The change of residential address should be immediately intimated either by the accused or by the sureties or by both, as the case may be with due documentary proof.

(h) Lastly, the concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police.

(iii) Duty to be cast upon the concerned magistrate/ trial judge to supervise proper issuance and service of summons/warrants/proclamation in terms of judgment passed by the Madhya Pradesh High Court in Ramesh Chand Gupta Vs. State of M.P. (Jabalpur Bench) 2000 (1) MPHT 376.

(iv) Proceedings should not be closed on declaration of an accused proclaimed offender, rather the following steps should be resorted to:

(a) The Court declaring a person as Proclaimed Person/Offender shall direct the police to take all necessary actions for tracing the Proclaimed Person/Offender and file the Status Report with respect to the actions taken by Police and such reports shall be called periodically.

(b) The Court, after declaring someone a Proclaimed Person/Offender, shall direct the police to trace and identify movable and immovable properties of the Proclaimed Person/Offender and file a status report with respect to assets of Proclaimed Person/Offender.

(c) The Court shall thereafter proceed to attach movable and immovable properties of the Proclaimed Person/Offender in accordance with law by resorting to Section 83 Cr.P.C.

(d) The concerned Courts shall monitor action taken by the police and shall issue such fresh directions as may be considered necessary. The Court may, in appropriate cases, record evidence of witnesses under Section 299 CrPC, 1973.

(e) Such proclaimed offender be prosecuted under Section 174-A IPC, if the Proclaimed Person/Offender does not surrender or is not traced within a period of six months of being declared as Proclaimed Person/Offender. However, where the Court decides to proceed against the accused for an offence under Section 174-A of the IPC, it is imperative to institute a formal written complaint in the competent jurisdictional court. This imperative arises from the prevailing provision of Section 195 Cr.P.C. which mandates that no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC (both inclusive) except on a complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate as has been held by this Court in ***Pardeep Kumar v. State of Punjab and another***, CRM-M-41656-2023 decided on 23.08.2023 and where an accused has also violated condition(s) of bail bond by non-appearance in Court, the accused be also prosecuted under Section 229A IPC.

(v) The concerned Magistrates should be sensitized about the correct applicability of law in relation to passing of orders declaring an accused proclaimed offender:

(a) Adjournment of 30 days cannot be treated as compliance of provisions of Section 82 (1) Cr.P.C.

(b) All provisions of Section 82 (2) (i) Cr.P.C. are to be mandatorily complied with cumulatively and not alternatively.

(c) Where the accused is not residing in India, his proclamation has to be effected abroad through the Indian Embassy situated in the country he is residing in.

(vi) The mandate of Sections 83-85 Cr.P.C. has to be adhered to in its letter and spirit by the concerned Magistrate in order to achieve its aim and object.

(vii) The State-level Supervisory Committee as directed to be constituted in the judgment rendered by the Hon'ble Supreme Court in Lallan Singh and others Vs. State of U.P. 2015 (6) RCR (Criminal) 144 to monitor convicts, who fail to surrender post dismissal of their appeals/revisions be also entrusted with the task of monitoring the arrest of accused persons, who have been declared proclaimed offenders.

8. I have heard learned counsel for the parties as well as the *amicus curiae* and perused the paper book with their able assistance.

9. A person is presumed to be innocent until proven guilty and as such, his liberty cannot be unjustly taken away as Article 21 of the Indian Constitution mandates that no person shall be deprived of his personal liberty except through procedure established by law. The Hon'ble Supreme Court has authoritatively elaborated the principle of law that issuance of non-bailable warrants of arrest directly would amount to curtailment of liberty of a person, which can only be done strictly in accordance with the procedure prescribed

under the law. A three Judge Bench of the Hon'ble Supreme Court ***Inder Mohan Goswami and another v. State of Uttranchal and others (2007) 12 SCC 1***, has held that if the presence of the accused can be ascertained by summons or bailable warrants, non-bailable warrants should not generally be issued. It also laid down the circumstances in which such warrants can be issued. Speaking through Justice Dalveer Bhandari, the following observations were made:

“When non-bailable warrants should be issued.

49. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- * it is reasonable to believe that the person will not voluntarily appear in court; or*
- * the police authorities are unable to find the person to serve him with a summon; or*
- * it is considered that the person could harm someone if not placed into custody immediately.*

50. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

51. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”

10. In the present case, vide order dated 03.12.2007, the petitioner was ordered to be summoned through proclamation under Section 82 Cr.P.C. for 24.01.2008. However, the proclamation remained unexecuted and therefore,

on 24.01.2008, it was again issued for 17.04.2008 and thereafter for 15.07.2018. Ultimately, he was declared Proclaimed Offender on 15.07.2008. The petitioner has been concealing himself from the process of law for the last about 15 years and therefore, keeping in view the peculiar facts and circumstances of the present case, this Court deems it appropriate to direct the petitioner to surrender before the learned trial Court within a period of two weeks from the date of receipt of certified copy of this order and file an application seeking bail, which shall be decided by the learned trial Court in accordance with law.

11. This Court had conducted a thorough analysis of the judicial precedents and taken note of the lackadaisical approach of the jurisdictional police authorities, which allowed the petitioner herein to conceal himself from the process of law for about 15 years as well as the fact that in five Sub Divisions of Amritsar (Rural) i.e. Attari, Ajanala, Majitha, Jandiala and Baba Bakala, since 2008 till 16.11.2023, a total of 1096 persons were declared proclaimed persons out of which 553 were arrested and proceedings under Section 174-A IPC were initiated against 257 persons while proceedings under Section 83 Cr.P.C. were not initiated against even a single individual. The attachment of property under Section 83 Cr.P.C. is a significant component of criminal justice administration, which allows jurisdictional Police authorities to ensure the presence of the accused during the legal process. The primary purpose of attachment of property under Section 83 Cr.P.C. is to prevent the accused from absconding or evading the process of law. It is a critical tool to ensure the presence of the accused during trial and also relevant in cases where the accused has been found guilty and he has been ordered to pay a fine or compensation to the victim.

12. In view of the discussion above, this Court issues the following directions:-

1. The complainant must provide a mobile number and address of the accused while lodging a report under Section 154 and 155 of Cr.P.C. or filing an application before the Magistrate under Section 156 (3) Cr.P.C. or a complaint under Section 190 Cr.P.C. or a complaint under any statute, to aid in issuance of process against the accused.
2. The Director General of Police for the States of Punjab, Haryana and U.T. Chandigarh are directed to constitute a State-level Supervisory Committee headed by the Additional Director General of Police (Law and Order) who shall monitor the cases of escapees who have been declared Proclaimed Persons/Offenders and issue necessary directions from time to time for bringing the escapees to the process of justice.

To the Police:

3. The concerned Senior Superintendent of Police/Superintendent of Police of each District in the States of Punjab and Haryana as well as the Union Territory, Chandigarh shall forward action report on the quarterly basis to the ADGP (Law and Order).
4. The Investigating Officer or the Station House Office must:
 - obtain at least two of the following documents at the time of arrest or soon thereafter:
 - (i) Passport.
 - (ii) Pan Card Copy.
 - (iii) Bank Passbook.
 - (iv) Credit card with photograph.
 - (v) Ration card.
 - (vi) Electricity bill.
 - (vii) Landline telephone bill.
 - (viii) Voter I.D. Card issued by the Election Commission of India.

- (ix) Property Tax Register
- (x) Aadhaar Card.

To the jurisdictional Courts:

5. The concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police.

6. The concerned magistrate/ trial judge is duty bound to supervise proper issuance and service of summons/warrants/proclamation in terms of judgment passed by the Madhya Pradesh High Court in ***Ramesh Chand Gupta Vs. State of M.P. (Jabalpur Bench) 2000 (1) MPHT 376.***

7. The concerned jurisdictional Magistrates are directed to ensure the aforesaid guidelines are complied with by the police and supervise proper issuance and service of summons/warrants/proclamation.

8. The proceedings shall not be closed on declaration of an accused as proclaimed offender, rather following steps must be taken:-

(a) The Court declaring a person as Proclaimed Person/Offender shall direct the police to take all necessary actions for tracing the Proclaimed Person/Offender and file a Status Report with respect to the actions taken by Police and such reports shall be called periodically.

(b) The Court, after declaring someone a Proclaimed Person/Offender, shall direct the police to trace and identify

his movable and immovable properties and file a status report with respect to his assets.

(c) Thereafter, in accordance with Section 83 Cr.P.C., the Court shall proceed to attach movable and immovable properties of the Proclaimed Person/Offender.

(d) The concerned Court shall monitor action taken by the police and issue such fresh directions, as may be considered necessary. In appropriate cases, the Court may record evidence of witnesses under section 299 Cr.P.C.

(e) If the Proclaimed Person/Offender does not surrender or is not traced within a period of six months of being declared a Proclaimed Person/Offender, he must be prosecuted under Section 174-A IPC.

(f) However, where the Court decides to proceed against the accused for an offence under Section 174-A IPC, it is imperative to institute a formal written complaint in the competent jurisdictional Court, in accordance with Section 195 Cr.P.C and where an accused has also violated condition(s) of bail bond by non-appearance in Court, the accused shall also be prosecuted under Section 229A IPC.

(g) The concerned Magistrates must keep in mind the following before declaring an accused as Proclaimed Person/Offender:-

(i) Adjournment of 30 days cannot be treated as compliance of provisions of Section 82 (1) Cr.P.C.

(ii) All provisions of Section 82 (2) (i) Cr.P.C. must be mandatorily complied with cumulatively and not alternatively.

(iii) Where the accused is not residing in India, his proclamation must be effected abroad through the Indian Embassy situated in the country of his residence.

9. The concerned Magistrate must ensure that the mandate of Sections 83-85 Cr.P.C. is adhered to scrupulously, in letter and spirit, in order to realise its aim and objective.

13. The instant petition stands disposed of in above terms. However, before parting with this order, this Court appreciates the valuable and effective assistance rendered by Mr. H.S. Randhawa, Advocate as *amicus curiae*.

14. Registry is directed to circulate a copy of this order to Director General of Police in the States of Punjab, Haryana and U.T. Chandigarh as well as in all the district Courts within the jurisdiction of the States of Punjab, Haryana and Union Territory of Chandigarh for information and compliance.

(HARPREET SINGH BRAR)
JUDGE

December 21, 2023

Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes