

2025:PHHC:015590



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

237

**CRM M-1654 of 2025
Date of Decision:31.01.2025**

Ajaib Singh @ Jaiba

...Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Piyush Sharma, Advocate, for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the order dated 17.08.2023 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the petitioner has been declared as proclaimed offender in a case arising out of FIR No. 148 dated 25.11.2022 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Ladhuwal, District Police Commissionerate Ludhiana (Annexure P-2).

2. Learned counsel for the petitioner contends that a false case bearing FIR No. 148 dated 25.11.2022 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 Police Station

Ladhuwal, District Police Commissionerate Ludhiana, was ordered to be registered against the petitioner. It was falsely alleged that the petitioner had allegedly fled from the spot, where, the police had recovered two bags containing 18 Kgs each of poppy husk. In fact, the petitioner was not present at the place of recovery and had been falsely involved. He further contends that thereafter the warrants of arrest were issued against the petitioner, however, from a perusal of the zimini order passed by the trial Court, it was apparent that the petitioner was never served. Rather, it was mentioned in the reports that the petitioner visited the given address occasionally. Ultimately, vide order dated 02.06.2023 (Annexure P-6), the Judicial Magistrate 1st Class observed that the petitioner was avoiding the presence in the Court and he may be served through a proclamation under Section 82 Cr.P.C., for 17.08.2023. It was also mentioned that the petitioner may be given a period of 30 days from the date of publication of such proclamation, requiring him to appear before the trial Court. In compliance of the impugned order dated 02.06.2023, the proclamation was published and the statement of the serving official, i.e., ASI Mohinder Singh was recorded on 17.08.2023, which is as under:-

“Stated that the proclamation of accused Ajaib Singh son of Anoop Singh r/o village Bakkarwal, PS Dharamkot, District Moga was entrusted to me for the

purpose of its execution upon which I had visited the residential house of accused on 09/06/2023 and a copy of proclamation was pasted at the outer wall of the house. Second copy of the proclamation was affixed at the common place of the colony and third copy of proclamation was affixed at the notice board of the Judicial Court Complex. The accused is absconding since long and there is no hope to trace out the accused. Therefore, accused may kindly be declared as Proclaimed person. My report is Ex. P1 and ExP2”.

3. Learned counsel for the petitioner contends that as per the statement of the serving official, he had allegedly visited the residential house of petitioner on 09.06.2023. He had affixed one copy of the proclamation on outer wall of the house, second copy on common place of the colony and third copy of proclamation was affixed on the notice board of Judicial Court Complex. However, the proclamation was not read publicly in some conspicuous place of the village and the official had not complied with the provisions of law. Thus, the impugned order is legally unsustainable.

4. A short reply by way of an affidavit of the Assistant Commissioner of Police (West) Ludhiana has been filed on behalf of the respondent-State and the same is taken on record.

5. Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had intentionally not appeared before the trial Court

for several months and is not entitled for any relief. It was submitted that the petitioner had the knowledge of pendency of the proceedings against him, however, he chose not to appear before the trial Court and the petition is liable to be dismissed. However, learned State counsel could not rebut the factual submissions made by learned counsel for the petitioner in the present case.

6. Section 82 of the Cr.P.C., 1973 which provides for publication of proclamation against person absconding, 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 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 subsection (1).”

7. It has been held by this Court in the matter of **Sonu Vs.**

State of Haryana 2021 (1) RCR (Criminal)319 as follows:-

9. *The essential requirements of Section 82 of the Cr.P.C. 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 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 : 2008 CrI. 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 Bishundayal Mahton 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 and publication of the proclamation. (See Gurappa Gugal 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 declared a proclaimed person/offender and the proclamation has to be issued and published again. (See Dilbagh Singh Vs. State of Punjab (P&H) : 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 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 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 CriLJ 965**).*

*(ix) 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. In the present case also, the proclamation was not published as per the mandatory provisions of Section 82 Cr.P.C. As per Section 82 Cr.P.C., the proclamation has to be read publicly in some conspicuous place of the town or village in which such person ordinarily resides. In the present case admittedly, ASI Mohinder Singh, Serving Constable clearly admitted that he had affixed one copy of the proclamation on the outer wall of the house, second copy at the common place and third copy of the proclamation was affixed on the notice board of the Judicial Court Complex. However, nowhere, he stated that he had publicly read proclamation in some conspicuous place of the village, where, the petitioner ordinarily resided.

9. Thus, in view of the above discussion, the impugned order dated 17.08.2023 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Ludhiana, is illegal and unsustainable and is ordered to be quashed qua the petitioner.

10. Since, the matter remained pending before the trial Court for the last several years, no purpose will be served by sending the petitioner behind the bars after such a long period. Consequently, the petitioner is permitted to surrender before the Trial Court/Area Magistrate/Duty Magistrate within a period of six weeks from today

and on his surrender, he shall be admitted to bail by the concerned Court on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Court. The Court, which admits the petitioner to bail, shall also be at liberty to impose such reasonable conditions, as provided by law. In case, the petitioner does not surrender within a period of six weeks from today, the present petition shall be deemed to be dismissed by this Court.

11. The petition is disposed off in above terms.

31.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No