

2025:PHHC:121130



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

CRM-M-49524-2025 (O&M)
Date of Decision: 05.09.2025

Vicky Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Mr. Akhil Saini, Advocate for
Mr. Ramnish Puri, Advocate,
for the petitioner.

Mr. Kamalpreet Bawa, DAG, Punjab.

AARADHNA SAWHNEY, J. (ORAL)

CRM-35513-2025

Application for exemption is allowed as prayed for.

CRM-M-49524-2025

1. Petitioner, an accused in case FIR No.19 dated 09.02.2022 registered against him under Sections 20(b) of NDPS Act, 1985 at Police Station Kotwali Bathinda, District Bathinda, has prayed for setting aside/quashing the order dated 12.11.2024 (Annexure P-2) passed by the learned Additional Sessions Judge, Bathinda vide which he (Petitioner) was declared a 'Proclaimed Offender'.

2. As per Petitioner, after he was arrested in the aforesaid FIR, he was granted the concession of bail vide order dated 10.03.2022 (copy annexed as Annexure P-3).

During pendency of the aforesaid case, petitioner could not appear

in the Court and on 30.08.2022, following order was passed:-

“Accused Vicky Kumar has not appeared despite issuance of notice. Case called several times since morning. Sufficiently awaited. As such, his bail order is hereby canceled. His bail/surety bonds are also canceled and forfeited in favour of the state. Let, his presence be secured through nonailable warrants of arrest for 26.10.2022.

Notice to his surety as well as identifier be also issued for the date fixed.”

Subsequently, on 26.10.2022, since the NBW issued to procure presence of accused, as also the notice issued to his surety and identifier, were not received back, fresh NBWs and notices were issued for 18.01.2023, when the following order was passed:-

“In view of report on nonailable warrants of arrest, this Court is satisfied that the presence of accused could not be procure in ordinary process. As such, he be summoned through proclamation u/s 82 Cr.PC for 19.4.2023 with notice issued to his surety and identifier.”

From 19.04.2023 to 06.06.2024, since repeated proclamation issued against accused-petitioner were not received back served. Fresh proclamation proceedings were ordered to be issued.

On 06.06.2024, the following order was passed:-

“Proclamation issued against the accused received back unexecuted. Fresh proclamation under section 82 Cr.PC be issued against the accused for 23.09.2024. Executing official be directed to appeared in the court on the next date of hearing. Surety of accused be summoned throughailable warrants in the sum of Rs.10,000/- for the date fixed.”

On 23.09.2024, the following order was passed:-

“Proclamation issued against accused Vicky Kumar under section 82 Cr.P.C. received back duly executed. Statement of

executing official ASI Jaspal Singh recorded in which he stated that he effected the said proclamation against the accused on 20.09.2024 and his report regarding the same is Mark A. Since a period of 30 days has not lapsed, since the said proclamation against the accused Vicky Kumar, so the presence of accused to be awaited for 12.11.2024. His surety be also summoned throughailable warrants in the sum of Rs. 10,000/- for the date fixed.”

On 12.11.2024, the impugned order was passed, which reads as under:-

“The case was fixed for awaiting appearance of accused Vicky Kumar, after proclamation under section 82 Cr.P.C. was effected against him. The statement of executing official ASI Jaspal Singh has already been recorded on 23.09.2024 in which he stated that he effected the proclamation against the accused Vicky Kumar on 20.09.2024 and his report is Mark A. As now the period of 30 days has lapsed since the said valid proclamation against the accused and as the said accused has not appeared in the court till date, accordingly, the said accused Vicky Kumar is declared to be proclaimed offender in the present case. Necessary intimation be sent to the Ld. SSP as well as Officer incharge of the concerned police station with a direction to constitute special police party to apprehend the accused. List of property of accused be filed within a week so that proceedings under Section 83 Cr.PC. can be initiated against him. List of property be filed on or before 29.03.2025. Proceeding under Section 83 Cr.PC be separately registered as CRM and be put up on the aforesaid date fixed. Copy of this order be placed on the said file. Now IO of this case be summoned for evidence under section 299 Cr.P.C. for 29.03.2025.”

3. Learned counsel submits that on 23.09.2024, since the requisite period of 30 days had not elapsed from the date when the Publication was published on 20.09.2024, learned trial Judge adjourned the case, in a routine manner to 12.11.2024 for presence of the accused, whereas in the scenario as

above, learned trial Judge ought to have issued fresh proclamation. Learned counsel further submits that from the proceedings as stand recorded in the file of the trial Court, it is clear that the requisite procedure so prescribed under Section 82 Cr.P.C. was not followed by the learned trial Judge, in letter and spirit. Order dated 12.11.2024, thus, as per learned counsel is legally unsustainable and deserves to be set aside. In support of his submission, learned counsel places reliance upon following judgments:-

- 1. Ashok Kumar vs. State of Haryana and another 2013(4) RCR (Criminal) 550**
- 2. Shokat Ali vs. State of Haryana and another, 2020(2) RCR (Criminal) 339**

Learned counsel further submits that the petitioner undertakes to appear before the learned trial Court within a period of 20 days.

4. Heard. Documents on record perused.

5. As has rightly been submitted by learned counsel, the learned trial Judge without recording any opinion that the accused has deliberately absented himself from appearing in the Court and that he is intentionally not appearing, wrongly arrived at a conclusion that presence of the accused cannot be secured through ordinary process. As noted above, many a times after the proclamation was issued, the case was repeatedly adjourned on the ground that the proclamation has been received unserved. Lastly, on 23.09.2024, statement of executing constable was recorded, who stated that he had visited the site on 20.09.2024. The Court was conscious of the fact that since period of 30 days has not elapsed, from the publication of proclamation, therefore, the case was adjourned to 12.11.2024, when the impugned order was passed. At this stage, it would be appropriate to refer to Section 82(1) of Cr.P.C., which 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.”

It is, thus, clear that a period of 30 days is required to be furnished to accused to put in his appearance. While interpreting the said provision, this Court in ***Ashok Kumar vs. State of Haryana and another 2013(4) RCR (Criminal) 550*** held that where the period of 30 days had not elapsed from the date the publication was issued and accused had to put in appearance in the Court, as also that where the Court subsequently adjourns the matter, such adjournment beyond 30 days cannot be treated as compliance of provisions of 82(1) Cr.P.C.

In view of the above referred judicial precedents, as also the facts and circumstances of the present case, the impugned order dated 12.11.2024 (Annexure P-2) passed by the learned ASJ, Bathinda, is set aside.

6. Resultantly, the present petition is allowed with a direction to the petitioner to appear before the Court concerned within a period of 20 days. On his appearance, he shall also furnish fresh bail bonds/surety bonds to the satisfaction of the trial Court. Besides, petitioner would also submit specific undertaking/affidavit that he will keep appearing during the proceedings of the trial in future and the proceedings would not be delayed because of his conduct.

05.09.2025

Parveen kumar

**(AARADHNA SAWHNEY)
JUDGE**

Whether speaking/reasoned :Yes/No

Whether reportable :Yes/No