

2025:PHHC:132617



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

CRM-M-50730-2025
Date of Decision: 22.09.2025

Lovepreet Singh alias Love

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY**Present:** Mr. Umesh Aggarwal, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, DAG, Punjab.

AARADHNA SAWHNEY, J. (ORAL)**CRM-37150-2025**

By virtue of the present application, applicant prays for placing on record zimni orders passed by the Ld. trial Court w.e.f. 05.10.2021 to 05.09.2025 as Annexure P-6. In view of the reasons mentioned therein, prayer is allowed. Documents are taken on record subject to all just exceptions.

CRM-M-50730-2025

1. Petitioner, a co-accused in case FIR No.314 dated 17.12.2020 registered against him for commission of offences punishable u/s 21/22/25/27/27-A/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 25/27/54/59 of the Arms Act, 1959, at Police Station Majitha, Amritsar Rural, has prayed for quashing of order dated 22.12.2023 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Amritsar, vide which he (Petitioner) was declared a 'Proclaimed Offender'.

2. Learned counsel submits that petitioner was not named in the FIR, rather was implicated on the basis of the disclosure statement of co-accused.

He was not even aware of the registration of the FIR against him. He further submits that a bare perusal of interim orders dated 31.03.2023, 06.05.2023 and 14.06.2023 reveal that in fact, on these dates the warrants of arrest were not received back. Further, in terms of the order dated 29.09.2023, fresh warrants of arrest of the petitioner were issued solely on account of request made by Investigating Officer. When the case was taken up on the next date i.e. 10.11.2023, NBWs were received back unexecuted and proclamation proceedings were initiated.

Learned counsel further submits that before issuing proclamation proceedings, learned JMIC did not even record a finding that petitioner is deliberately avoiding to appear in the Court. There was no report before the Ld. JMIC to the effect that the petitioner is deliberately concealing himself, as a consequence of which warrants of arrest could not be executed against him. In the light of the proceedings as stand recorded in the interim orders, as per learned counsel, issuance of the proclamation proceedings is not in conformity with the procedure so laid down under Section 82 Cr.PC. With this backdrop, it has been prayed that the impugned order be set aside.

3. Notice of motion.

4. Mr. Kamalpreet Bawa, DAG Punjab, puts in appearance and opposes the prayer of the petitioner by submitting that petitioner does not deserve any sympathy and that if lenient view is taken, there is every possibility that petitioner might abscond, thus delaying the trial.

5. I have heard learned counsel for the parties and perused the case file carefully.

6. Before proceeding further, it would be appropriate to refer to a judgment of Coordinate Bench of this Court in ***CRM-M-23777-2020*** titled ***Sonu V/s. State of Haryana***, decided on 06.10.2020, wherein the essential

requirements of section 82 Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as proclaimed person/offender were discussed 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 Cri LJ 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 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 CriLJ 965).

(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).

7. It is, thus, clear that the Court which issues proclamation under

Section 82 Cr.P.C., must record specific reason/satisfaction that the accused against whom the proceedings are being initiated has absconded or concealed himself to evade the arrest. As noted above on 03 dates i.e. 31.03.2023, 06.05.2023 and 14.06.2023, warrants of arrest were not received back. Even on 29.09.2023, warrants of arrest were issued in view of the request of the investigating officer. When the proclamation proceedings were initiated against petitioner, in terms of the order dated 10.11.2023, no finding was recorded by the learned Magistrate that the petitioner is deliberately avoiding to appear before the Court has concealed himself, his presence cannot be secured through ordinary process and hence, the issuance of the proclamation.

8. Resultantly, in view of the discussion made hereinabove, the impugned order dated 22.12.2023, whereby the petitioner was declared '*Proclaimed Offender*', is set aside.

9. Learned counsel submits that the petitioner undertakes to appear before the learned trial Court.

10. In view of the facts mentioned hereinabove, the present petition is disposed of with a direction to the petitioner to appear before the Court concerned within a period of 15 days from today.

22.09.2025

Parveen kumar

(AARADHNA SAWHNEY)
JUDGE

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