

27.01.2026

Sl. No. 32.

sb.

CRR 5071 of 2025

**Sekh Mohammad
Vs.
The State of West Bengal.**

Mr. Moyukh Mukherjee,
Mr. Arunava Ganguly,

...for the petitioner

Mr. Suman De,
Ms. Baishakhi Chatterjee

...for the State

The petitioner herein has assailed the order dated 18.7.2025 passed by the learned Chief Judicial Magistrate, Hooghly in connection with G.R. case no. 1847 of 2012. By the impugned order, learned court below had issued warrant of proclamation against the petitioner.

Being aggrieved by the aforesaid order, learned counsel for the petitioner submits that the petitioner is not FIR named and his name allegedly disclosed from the co-accused statement. Learned counsel for the petitioner has drawn my attention to the several orders passed by the Trial court wherefrom it is found that the charge-sheet was submitted in connection with the instant case on 2nd May, 2013 showing the petitioner as absconder and therefore, the warrant of arrest was issued against the present petitioner along with others on that day and thereafter for about 10-12 years, the dates are being fixed for execution report of the warrant of arrest. Finally, the warrant of proclamation was issued against the petitioner by the impugned order dated 18.7.2025.

It is submitted on behalf of the petitioner that since the petitioner was not FIR named, there was no scope on his part to know about the issuance of warrant of arrest against him. Therefore, there was no reason to believe for the court below to come to a conclusion that the petitioner has absconded, which warranted issuance of warrant of proclamation. Therefore, he submits that the order impugned by which the order of proclamation was issued, is contrary to the provision envisaged in the Section 82 of the Code of Criminal Procedure read with Section 84 of the BNSS and for which the order impugned is liable to be set aside.

Learned counsel for the State opposed the prayer contending that the petitioner is absconding for more than 12 years. He further submits that it appears from the case diary that on 12.3.2013, the police had gone to his house but he was found absent in his house and his source could not give him any information about the petitioner. Therefore, the Trial court was justified in issuing the warrant of proclamation against the present petitioner.

Having heard learned counsel for the petitioner and the State, it appears that the word “reason to believe” that appears in the above-mentioned sections, implies that there must be a prima facie satisfaction of the court that the petitioner is evading arrest before passing an order of proclamation against the petitioner. In the instant case, it appears that though the petitioner was not FIR named but he has been charge-sheeted and he was not served any notice about his implication with the alleged offence.

It further appears that about 12 years back on one occasion police had gone to his house, when he was found absent nothing has been shown to me that police thereafter made any further attempt either to inform him or to apprehend him. To be on “absconder” in the eye of law, it is not sufficient to say that on one occasion accused person had runaway from his home, when police had gone to his house but there must be prima facie satisfaction that the accused hides himself from the process of law.

All the orders passed by the Trial court for the last 12 years, clearly shows that after issuance of warrant of arrest, next dates were only fixed for execution report of warrant of arrest. There is nothing to show that the petitioner was informed for the issuance of warrant of arrest. Therefore, the order impugned had not been passed in compliance with the provision as laid down in Section 82 of the Code of Criminal Procedure read with Section 84 of the BNSS and as such, it is liable to be set aside.

In view of above, CRR 5071 of 2025 is accordingly allowed. The impugned order dated 18.7.2025 and subsequent orders which pertains to issuance of warrant of proclamation against the present petitioner is only hereby set aside.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)