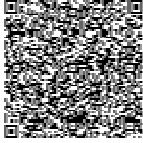


CRM-M-17639-2026

2026:PHHC:071355



148

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17639-2026

Pargat Singh

....Petitioner

versus

State of Punjab

....Respondent

Date of Decision: May 07, 2026

Date of Uploading: May 07, 2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Ms. Kiranjeet Kaur, Advocate for the petitioner.

Mr. Hemant Aggarwal, DAG Punjab.

SUMEET GOEL, J.

Present petition has been filed under Section 528 of the BNSS, 2023 seeking setting aside of the impugned order dated 28.03.2007 (Annexure P-5) passed by the learned Judicial Magistrate Ist Class, Moga, whereby, the petitioner has been declared as proclaimed offender, in case FIR No.21 dated 01.02.2000, registered under Sections 447/ 427/ 147 of the IPC, 1860, at Police Station Baghapurana.

2. Learned counsel for the petitioner has contended that the impugned order, whereby the petitioner has been declared proclaimed offender, is wholly illegal, arbitrary, and unsustainable in the eyes of law. Learned counsel has argued that on 28.04.2000, the petitioner was declared innocent and the challan was presented against the other accused persons. Learned counsel has further argued that thereafter, the petitioner had gone abroad. Learned counsel has urged that

CRM-M-17639-2026

upon an application under Section 319 Cr. P.C. (Section 358 of BNSS) moved by the State, vide order dated 08.01.2007, learned JMIC, Moga had summoned the petitioner as an additional accused to face trial. Learned counsel has submitted that vide order dated 22.01.2007 (Annexure P-2), it was stated that summons issued against the petitioner received back with the report that the present petitioner had gone abroad and, thus, non-bailable warrants were issued against the petitioner for 31.01.2007. Thereafter, vide order dated 22.02.2007 (Annexure P-3) after relying on the statement of serving constable, proclamation was issued against the petitioner for 28.03.2007. Learned counsel has further argued that proclamation issued against the petitioner was in gross violation of provisions of Section 82 of the Cr. P.C./ Section 84 of the BNSS. Learned counsel has further urged that learned Court below after relying on the report dated 28.02.2007 of the serving constable, vide impugned order dated 28.03.2007 (Annexure P-5) still declared the petitioner as proclaimed offender.

2.1. Learned counsel has argued that, thus, the order, declaring the petitioner proclaimed person, is in gross violation of law and principles of natural justice as there was no deliberate evasion or non-appearance on the part of the petitioner. Learned counsel has submitted that the summons issued against the petitioner were received back since the petitioner had gone abroad and, thus, subsequent issuance of proclamation against the petitioner as also impugned order declaring the petitioner as proclaimed offender are contrary and without complying with the provisions of Sections 82 of the Cr. P.C. (Section 84 of the BNSS).

2.2. Learned counsel has submitted that vide judgment dated 20.09.2007 (Annexure P-6), other co-accused of the petitioner have been acquitted of the charges framed against them, by learned JMIC, Moga.

2.3. On the basis of these submissions, learned counsel has prayed that the impugned order is liable to be set-aside being illegal and unjustified.

3. Learned State counsel, while raising submissions in tandem with the reply by way of an affidavit dated 22.04.2026, has opposed the present petition. While refuting the case set up by the petitioner, detailed arguments were advanced on merits, contending that the offence alleged against the petitioner is serious in nature. Furthermore, it has been submitted by the learned State counsel that since the petitioner could not be served by way of issuance of summons, therefore, the Court below was left with no other option to issue non-bailable warrants of the petitioner. It has been further submitted that the presence of the petitioner thereafter as well could not be secured, and, thus, the Court below rightly issued proclamation against the petitioner on 22.02.2007, which was duly effected on 28.02.2007. Learned State counsel has submitted that other co-accused, who faced the trial, are none other than the family members of the petitioner, therefore, the petitioner had full knowledge about the proceedings in question initiated against him, therefore, the petitioner intentionally did not turn up to cause appearance before the Court below. Learned State counsel has submitted that the Court below, vide impugned order dated 28.03.2007, rightly declared the petitioner as proclaimed offender after following the procedure as laid-down under Section 82 of the Cr. P.C., 1973/ Section 84 of the BNSS, in letter and spirit and no discrepancy whatsoever is forthcoming from the records of the case. Accordingly, dismissal of the instant petition has been prayed for.

3.1. Learned State counsel has submitted that co-accused of the petitioner have been acquitted of the charges framed against them by the learned Court below.

4. I have heard the learned counsel for the rival parties and carefully perused the record of the case.

5. The law is well settled that no person can be declared a proclaimed offender/person unless the procedure prescribed under Section 82 of the Code of Criminal Procedure, 1973/ Section 84 of the BNSS, is strictly and meticulously adhered to. It is trite that the provisions of Section 82 Cr.P.C. are mandatory in nature, and any non-compliance thereof vitiates the entire proceedings. Furthermore, Section 82(1) of the Cr.P.C. clearly provides that before issuing a proclamation requiring a person to appear, the Court must have reason to believe, based on material on record, that such person has absconded or is concealing himself, so that the warrant cannot be executed.

5.1. Upon perusal of the record as well as reply filed by the State and the submissions made by learned counsel for the rival parties, it is borne out that summons issued against the petitioner were received back as the petitioner had gone abroad. Thereafter, non-bailable warrants were issued, followed by proclamation proceedings and ultimately impugned order declaring the petitioner a proclaimed offender; however, the said proceedings were not conducted in accordance with the mandatory provisions of Section 82 Cr.P.C.

6. This Court finds that the course adopted by the Court below is in clear contravention of, and antithetical to, the provisions of Section 82 of the Code of Criminal Procedure, 1973. The Court below has committed a manifest illegality by issuing and acting upon the proclamation without ensuring compliance with the mandatory statutory requirements. The learned Court below, while declaring the petitioner as proclaimed person, failed to record the requisite judicial satisfaction regarding due execution of the proclamation and proceeded in a mechanical and perfunctory manner, rendering the impugned order legally unsustainable. Such an

order being violative of mandatory provisions of law, cannot be sustained. Section 82 of the Criminal Procedure Code, 1973 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 Sections 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 sub-section (1).”

7. A Coordinate Bench of this Court while dealing with invocation of the provision of Section 82 of the Code of Criminal Procedure, against an accused in the case of ‘**Sonu v. State of Haryana, 2021(1) RCR (Criminal) 319**’, held as under:

“9. The essential requirements of section 82 of the Cr.P.C., 1973 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 v. 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., 1973. (See Rohit Kumar v. 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 v. Emperor : AIR 1943 Patna 366 and Devender Singh Negi v. 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 v. State of Mysore : 1969 CriLJ 826 and Shokat Ali v. 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 v. State of Punjab (P&H) : 2015 (8) RCR (CRIMINAL) 166 and Ashok Kumar v. 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., 1973. 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., 1973 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 v. 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 v. 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., 1973. 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 v. State: 1958 CriLJ 965).*

(xi) The conditions specified in section 82(2) of the Cr.P.C., 1973 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 v. State of U.P. and another: 1994 CriLJ 1783 and Pal Singh v. The State: 1955 CriLJ 318)."

8. It is by now a settled principle of law that prior to issuing a proclamation under Section 82 Cr. P.C., the Court is required to record its satisfaction that the accused, against whom such proclamation is sought, is absconding or is concealing himself with the intention to evade arrest. This foundational and jurisdictional requirement is conspicuously absent in the present case. A perusal of the impugned order dated 28.03.2007 reveals that no such satisfaction has been recorded by the Court below, nor does the record disclose any material which could justify an inference that the petitioner had absconded or was deliberately avoiding his appearance before the Court. Furthermore, the effecting of proclamation was not done as per provisions of Section 82 of the Cr. P.C., resulting in serious prejudice to the petitioner.

9. The provisions of Section 82 of the Code of Criminal Procedure, having serious civil and criminal ramifications *qua* the rights of an accused, particularly affecting his liberty and participation in trial proceedings, cannot be invoked in a casual or cavalier manner. The mandatory requirement of recording satisfaction that the accused has absconded or is concealing himself so that the warrant of arrest cannot be executed, as embodied under Section 82 Cr.P.C., must be scrupulously complied with on the basis of cogent and relevant material available on record. Any non-adherence to this statutory mandate while declaring an accused as a proclaimed offender/person vitiates the proclamation proceedings in their entirety.

10. In the aforesaid backdrop, this Court is of the considered opinion that no useful purpose would be served by permitting the criminal proceedings to

continue against the petitioner, which are founded upon an illegal and procedurally flawed proclamation. It is, therefore, a fit and appropriate case for the exercise of inherent powers under Section 528 of the BNSS / Section 482 of the Cr.P.C., so as to prevent abuse of the process of law and to secure the ends of justice.

11. In view of the above findings, and considering the entirety of the facts and circumstances of the present case, the present petition is allowed. Consequently, the impugned order dated 28.03.2007 (Annexure P-5) passed by the learned Judicial Magistrate Ist Class, Moga, whereby, the petitioner has been declared as proclaimed offender, in case FIR No.21 dated 01.02.2000, registered under Sections 447/ 427/ 147 of the IPC, 1860, at Police Station Baghapurana, as well as all consequential proceedings arising therefrom, are hereby **quashed**.

12. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

May 07, 2026
mahavir

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