

CRM-M-31833-2025

2026:PHHC:048532



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Swati Khanna and others

....Petitioners

versus

State of Punjab

....Respondent

Date of Decision: March 27, 2026

Date of Uploading: March 27, 2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Lakshay Bector, Advocate for the petitioners
(presence marked through video-conferencing).

Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J.

Present petition has been filed under Section 528 of the BNSS, 2023 seeking setting aside of the impugned order dated 07.12.2023 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby, the petitioners have been declared as proclaimed persons, in case FIR No.19 dated 21.02.2021, registered under Sections 18A(C), 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and Sections 420, 276, 336, 308, 467, 468, 471 of IPC, at Police Station Division No.1, Ludhiana, District Ludhiana and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioners have contended that the impugned order, whereby the petitioners have been declared proclaimed persons, is wholly illegal, arbitrary, and unsustainable in the eyes of law.

Learned counsel has argued that challan in the FIR in question was presented against three accused persons, namely, Aman Kumar, Simran Sahota and Anoop Kumar, therefore, the petitioners (*herein*) remained under impression that they were declared innocent since no challan *qua* the petitioner was presented. Learned counsel has further argued that in the said circumstances, the petitioners could not appear before the trial Court on 07.12.2023 (Annexure P-2), and consequently, they were declared proclaimed persons, vide impugned order dated 07.12.2023. Learned counsel has also argued that due to bonafide mistake, petitioner – Swati Khanna moved an anticipatory bail application before the Court below, which came to be dismissed, vide order dated 22.05.2025.

2.1. Learned counsel has further argued that proclamation issued against the petitioners was in gross violation of provisions of Section 82 of the Cr. P.C./ Section 84 of the BNSS. A perusal of the statement dated 07.09.2023 of the serving official reveals that the proclamation was not read in some conspicuous place. Learned counsel has argued that, still the petitioners were declared as proclaimed persons, vide impugned order by the Court below.

2.2. Learned counsel has argued that, thus, the order, declaring the petitioners proclaimed persons, 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 petitioners. 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. On the other hand, learned State counsel has opposed the present petition. While refuting the case set up by the petitioners, detailed arguments

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were advanced on merits, contending that the offence alleged against the petitioners is serious in nature. Furthermore, it has been submitted by the learned State counsel that despite coercive steps having been taken against the petitioners, they kept avoiding service of process of the Court, and consequently, learned Court below issued proclamation against the petitioners. Learned State counsel has argued that ultimately, vide impugned order dated 07.12.2023, the petitioners were declared as proclaimed persons 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.

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. In the present case, it has been submitted by learned counsel for the petitioners that since challan in the FIR in question was filed against three accused persons only, therefore, the petitioners did not appear before the trial

Court while remaining under impression that they have been declared innocent. The said non-appearance was not deliberate or intentional on the part of the petitioners. Further, after issuance of proclamation against the petitioners, statement of the serving official was recorded. Perusal of the said statement reveals that, in terms of the provisions of Section 82 Cr.P.C., the proclamation was not read publicly at a conspicuous place of the town or village in which the petitioners ordinarily reside, nor is there any material to demonstrate compliance with the prescribed modes of publication.

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 petitioners as proclaimed persons, 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 07.12.2023 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 petitioners had absconded or were deliberately avoiding their 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 petitioners.

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 petitioners, 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.

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Consequently, the impugned order dated 07.12.2023 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby, the petitioners have been declared as proclaimed persons, in case FIR No.19 dated 21.02.2021, registered under Sections 18A(c), 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and Sections 420, 276, 336 and 308 of IPC, at Police Station Division No.1, Ludhiana, District Ludhiana, 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

March 27, 2026
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No