

2026:PHHC:022802



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-66967-2025

Arshdeep Singh Gill @ Arshdeep Singh

....Petitioner

versus

State of Punjab and another

....Respondents

Date of reserve:	February 12, 2026
Date of Pronouncement/ Decision:	February 16, 2026
Date of Uploading:	February 16, 2026

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. S.P.S. Aulakh, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

None for respondent No.2.

SUMEET GOEL, J.

Present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’), seeking setting aside of the impugned order dated 09.12.2024 (Annexure P-9) passed by the learned Judicial Magistrate Ist Class, Samrala, in case bearing No.CHI/169/2018 titled as “State vs Daljit Singh etc.), whereby, the petitioner was declared as proclaimed person, in case arising out of FIR No.170 dated 02.10.2018, registered under Sections 295, 160, 323, 506 and 34 of the Indian Penal Code, 1860 (for short ‘IPC’), at Police Station Machhiwara, District Khanna.

2. Learned counsel for the petitioner has contended that the impugned order, whereby the petitioner has been declared a proclaimed person, is wholly illegal, arbitrary, and unsustainable in the eyes of law. Learned counsel has argued that the petitioner was released on bail by the Trial Court. Learned counsel has further argued that during pendency of the trial, the parties mutually agreed to resolve the dispute in question and arrived at a compromise and *qua* which, a petition was also moved before this Court, but ultimately, the same was dismissed as withdrawn, vide order dated 20.02.2024 (Annexure P-3). Learned counsel has iterated that a notice was issued by the learned trial Court, but said notice was received by the father of the petitioner, due to which, he could not appear before the trial Court on 12.04.2024. Learned counsel has argued that the trial Court, vide order dated 12.04.2024 (Annexure P-4) cancelled and forfeited the bail/surety bonds of the petitioner and also issued warrants of arrest, for 14.05.2024. Learned counsel has further iterated that warrants of arrest issued by the trial Court remained unexecuted and therefore, vide order dated 07.10.2024 (Annexure P-5), proclamation was issued against the petitioner. Learned counsel has argued that the statement of serving constable dated 11.11.2024 (Annexure P-8) reveals that the petitioner was not found on the address, but his mother was present therefore, he affixed one copy of proclamation on the gate of house of the petitioner, one copy was affixed on the wall of the bus stand, Machhiwara Sahib and one copy was affixed on notice board of the Court.

2.1. Learned counsel has iterated that based on the report of the serving official, learned trial Court, vide impugned order dated 09.12.2024 (Annexure P-9), declared the petitioner as proclaimed person, which is erroneous and is not sustainable given non-compliance of proper procedure as envisaged under Section 82 of the Cr. P.C. Learned counsel has further argued that the serving constable has failed to comply with the provisions of Section 82 of the Cr. P.C. as the proclamation was not publicly read in some conspicuous place. Learned counsel has further iterated that the learned trial court failed to follow the procedure under Section 105 of the Cr. P.C. since it was within its knowledge that the petitioner had gone abroad at the time of issuance of process under Section 82 of the Cr. P.C. as well as at the time of declaring the petitioner as proclaimed person.

2.2. Learned counsel has further argued that the petitioner is not absconding and had never intentionally sought to evade the process of law and the Court. Learned counsel has argued that the petitioner was under impression that since compromise was effected between the parties, therefore, the FIR has been quashed. Learned counsel has further argued that the petitioner is ready and willing to join proceedings before the trial Court on each and every date. On the basis of these submissions, learned counsel has prayed that the impugned order is liable to be set-aside being illegal and unjustified and, hence, liable to be set-aside.

3. Short reply by way of an affidavit dated 14.01.2026 has already been filed by the learned State counsel. Raising submissions in tandem with the said short reply, learned counsel has opposed the present petition. While

refuting the case set up by the petitioner, detailed arguments were advanced on merits, contention regarding non-compliance of Section 82 of the Cr. P.C. is misconceived and contrary to judicial record as the learned Court below has passed the impugned order after recording due satisfaction that proclamation had been duly effected by the serving official and clear statutory period of 30 days was afforded to enable petitioner to cause appearance before the trial Court. Learned counsel has argued that the petitioner has deliberately avoided the process of law and did not cause appearance and the conduct of the petitioner disentitles him from any relief. Moreover, it has been stated that the learned Court below followed the procedure as laid-down under Section 82 of the Cr. P.C., 1973 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 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 that such person has absconded or is concealing himself so that the warrant cannot be executed. In the present case, the record reflects

that the petitioner was on bail, but since he failed to appear before the trial Court, his bail/ surety bonds were forfeited to the State. The petitioner was under impression that since the matter stands compromised, therefore, he had gone abroad and could not appear before the Court below on the particular date(s). A perusal of statement of serving official shows that the proclamation was not read in some conspicuous place, as per requirements of provisions under Section 82 of the 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 a 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.

8.1. Perusal of the *zimni* order dated 21.07.2023 (Annexure P-10) passed by the Court below reveals that pursuant to the order dated 04.07.2023, passed by this Court in CRM-26223-2023 in CRM-M-12254-2023, the petitioner (through his Special Power of Attorney) and co-accused, namely Daljit Singh Gill were directed to appear before the trial Court for recording statements. The petitioner, through his Special Power of Attorney, had not appeared, but co-accused – Daljit Singh Gill had appeared and his statement was also recorded, wherein, he had stated that the petitioner had gone to abroad for his higher studies. A perusal of the impugned order dated 09.12.2024 reveals that since the petitioner had already gone abroad, therefore, the learned Court below has wrongly recorded satisfaction to the effect that the proclamation was duly effected and statutory period of 30 days was elapsed, in terms of provisions of Section 82 of the Cr. P.C. and that he was willfully absconding or concealing himself. Furthermore, the issuance of warrants and proclamation without establishing proper service of earlier process(s) shows non-compliance with the due process of law, 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 09.12.2024 (Annexure P-9) passed by the learned Judicial Magistrate Ist Class, Samrala, in case bearing No.CHI/169/2018 titled as “State vs Daljit Singh etc.), whereby, the petitioner was declared as proclaimed person, in case arising out of FIR No.170 dated 02.10.2018, registered under Sections 295, 160, 323, 506 and 34 of the Indian Penal Code, 1860 (for short ‘IPC’), at Police Station Machhiwara, District Khanna, as well as all consequential proceedings arising therefrom, are hereby quashed.

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

(SUMEET GOEL)
JUDGE

February 16,2026
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No