



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

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CRM-M No.73046 of 2025 (O&M)
Date of Decision: 20.01.2026

Kewal Singh

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH**Present:** Mr. Lakhwinder Singh Mann, Advocate for the petitioner.

Mr. Eklavya Darshi, DAG, Punjab.

Mr. Hardeep Singh, Advocate for the complainant.

SURYA PARTAP SINGH, J. (Oral):

The order dated 04.05.2002 (Annexure P-9), hereinafter being referred to as 'impugned order', passed by the Court of learned Judicial Magistrate Ist Class, Nakodar, District Jalandhar, hereinafter being referred to as "trial Court", is under challenge in the present petition, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter referred to as "BNSS" only.

2. By virtue of abovementioned order, the learned trial Court while holding a trial for the commission of offence punishable under Sections 326, 324, 323, 148 and 149 IPC, hereinafter being referred to as 'IPC', declared the petitioner to be a proclaimed person.

3. In nut-shell, the facts emerging from record are that the petitioner was facing a trial for the commission of offence punishable under Sections



under Sections 326, 324, 323, 148 and 149 IPC and in the abovementioned case, he was on bail. However, later on when he could not appear before the learned trial Court, the learned trial Court cancelled the bail of the petitioner and issued warrant of arrest. Thereafter, on various occasions, non-bailable warrants were issued, however, the same could not be executed as the petitioner had left for a foreign country and on 08.12.2000, the learned trial Court issued proclamation against the petitioner for 13.02.2001.

4. Subsequently, the learned trial Court vide order dated 31.05.2001, when the proclamation issued against the petitioner was remains unexecuted, issued notice to the SHO to direct the serving constable to produce the report regarding affixation of proclamation by 04.07.2001. Vide order dated 04.07.2001, the matter was adjourned to 17.08.2001 for recording statement of serving constable but his statement was recorded on 04.05.2002 and thereafter on the same day the petitioner was declared a proclaimed offender.

5. Notice of motion.

6. Since advance notice has already been served, Mr. Eklavya Darshi, DAG, Punjab, appears on behalf of respondent-State. Hence, service of notice upon the State is hereby dispensed with.

7. Mr. Hardeep Singh, Advocate has put in appearance on behalf of the complainant. Memorandum of Appearance has been filed. The same be taken on record.

8. Heard.

9. It has been contended on behalf of petitioner that the learned trial



Court has committed an error when without following due process, it declared the petitioner to be a proclaimed person. It has been further contended by learned counsel for the petitioner that in the present case, proclamation issued against the petitioner is defective in view of fact that the proclamation for 13.02.2001 was issued by the learned trial Court on 08.12.2000. Thereafter, on three occasions the serving constable did not publish the proclamation and therefore, vide order dated 31.05.2001, the learned trial Court issued notice to the SHO to direct the serving constable to produce the proclamation by 04.07.2001. On the same day, serving constable was summoned for 17.08.2001 for recording statement but the affixation of proclamation was done on 20.06.2001. As per learned counsel for the petitioner, 30 days' period as mandated under Section 82 of Cr.P.C. was not afforded to the petitioner, for appearance in the Court. It has also been pointed out by learned counsel for the petitioner that even the affixation of proclamation was not as per prescribed provisions, as the Executing Constable did not publicly read the contents of the abovementioned proclamation.

10. In addition to above, it has been alleged by the petitioner that because of defective procedure adopted by the learned trial Court, in declaring the petitioner to be a proclaimed offender, the impugned order is liable to be set aside.

11. *Per contra*, the learned State Counsel being assisted by learned counsel for the complainant has argued that the petitioner is a person, who last appeared before the Court in the year 2000 and thereafter he absconded. The



learned State Counsel has argued that in the present case, the petitioner is a person who right from the very beginning was aware of the pendency of criminal proceedings against him, and that the petitioner is the person, who, violated the conditions of bail with impunity, and took the law in his own hands and went abroad without caring for the criminal proceedings pending against him. As per learned State Counsel, since the petitioner himself opted not to appear before the Court, and remained absent for long, now he cannot draw benefit of any technical defect, which could not be followed in declaring the petitioner to be a proclaimed offender.

12. The record has been perused carefully.

13. A perusal of the record shows that the petitioner has placed on record the copy of statement of the Executing Constable recorded by the learned trial Court, before passing the order of declaring the petitioner to be a proclaimed offender. The statement of Executing Constable, namely Jaswant Singh dated 20.06.2001 reads as under:-

“Sir, it is submitted here proclamation of Kewal Singh S/o Teja R/o Kakkar Kalan was issued. I alongwith Sarpanch of the village namely Balwinder Kaur and Makhan Singh pasted the copy of the proclamation on the door and second copy was pasted at the wall of the Gurudawara and the munadi was conducted through Chowkidar Buta Singh and the copy of the proclamation has been passed on the notice board of the court.”

14. A perusal of the record further shows:-

- (a) that the learned trial Court declared the petitioner to be a proclaimed offender on the basis of affixation of proclamation issued for 04.07.2001;



- (b) that from the date of affixation of proclamation at least 30 days' time should have been afforded to the petitioner to appear before the Court, but in the instant case, the date fixed for appearance before the Court was 04.07.2001 but the proclamation was affixed on 20.06.2001. Thus 30 days' were not afforded to the petitioner to appear before the Court; and
- (c) that for 04.05.2002 when the petitioner was declared proclaimed offender, any proclamation was not issued.

15. A bare perusal of the abovementioned statement of the Executing Constable shows that 30 days' time was not afforded to the petitioner to appear before the Court as the affixation of proclamation was made on 20.06.2001 while petitioner was to appear before the Court on 04.07.2001. The order dated 04.05.2002 shows that merely on the basis of abovementioned statement of the Executing Constable, the petitioner has been declared a proclaimed person.

16. With regard to the above-mentioned procedure adopted by the Executing Constable, it is relevant to mention here that Section 82(2) of Cr.P.C lays down that following steps are necessary to be taken before declaring a person to be a proclaimed person:-

“(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.”*

17. With regard to mandatory nature of abovementioned procedure, it has been repeatedly observed by this Court, that the compliance of abovementioned provisions of Section 82(2) of Cr.P.C is mandatory in nature. It has also been held that in case the above process is not followed in letter and spirit, the impugned order declaring a person to be a proclaimed offender/proclaimed person is defective.

18. In this regard in the case of ‘*Tirlok Chand Vs. State of Haryana 2023(2) Law Herald 1545*,’ this High Court observed that if a proclamation is issued for appearance of an accused on a fixed date before the Court, and on that date he is not declared proclaimed person, for subsequent date fresh proclamation should be issued. Similar view has been taken in the cases of ‘*Jarnail Singh v. State of Punjab & Another (CRM-M-27944 of 2024, decided on 04.09.2024)*’ and ‘*Gagandeep Singh v. State of Punjab (CRM-M-50704-2024, decided on 28.11.2024)*’.

19. With regard to failure of learned trial Court to give 30 days’ time to the accused to appear before the Court after proclamation, this Court in the case of ‘*Avtar Singh Vs. State of Punjab and Anr.*’ in CRM-M-1866-2017’ has observed as under:-

“The above quoted provision is clear that through the



proclamation made prior to declaration of a person as a proclaimed offender, he should be given not less than thirty days from the date of its proclamation to appear at a specified place and a specified time.

In the case in hand, thirty days were not given to the petitioner to appear before the Trial Court as the proclamation was made on 13.05.2011 requiring him to appear before the Trial Court on 14.05.2011. Thus, the proclamation and the subsequent order dated 03.09.2011 (Annexure P-2) declaring the petitioner to be a proclaimed offender do not confirm with the mandate of Section 82 (1) of the Code.

20. Taking into consideration the cumulative effect of the abovementioned factors, as there was a defect in affixation of proclamation, i.e. 30 days' period was not afforded to the petitioner to appear before the Court after affixation of proclamation and any proclamation for 04.05.2002 was not issued, the order dated 04.05.2002 passed by the learned trial Court is hereby held to be perverse, defective and unsustainable in the eyes of law. Resultantly, the present petition is hereby allowed and the impugned order dated 04.05.2002 passed by the learned trial Court is hereby quashed.

21. It is however made clear that this order is with regard to legality of proclamation only. Since the petitioner had jumped the bail and his bail has been cancelled and bonds have been forfeited to the State, the order of learned trial Court with regard to cancellation of bail and issuance of warrant of arrest against the petitioner shall remain intact, and therefore, in case the petitioner surrenders before the learned trial Court, the learned trial Court will be at



liberty to take the petitioner into custody or proceed under Section 491 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 446 Cr.P.C). However, in case the petitioner surrenders and files an application for bail, the same be disposed of expeditiously, and in any case within a period of seven days.

(SURYA PARTAP SINGH)
JUDGE

20.01.2026
Manoj Bhutani

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