



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

148

CRM-M No.72845 of 2025 (O&M)
Date of Decision: 15.01.2026

Heera Singh

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Birinder Singh Khehar, Advocate for the petitioner.

Mr. Eklavya Darshi, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

By virtue of present petition, filed under Section 528 of the 'Bharatiya Nagarik Suraksha Sanhita 2023', hereinafter referred to as "BNSS" only, the order dated 21.09.2022 (Annexure P-7), hereinafter being referred to as 'impugned order', passed by the learned Sub Divisional Judicial Magistrate, Samrala, hereinafter being referred to as "trial Court", is under challenge.

2. By virtue of abovementioned order, the learned trial Court while holding a trial for the commission of offence punishable under Section 61-1-14 of Excise Act, hereinafter being referred to as 'Act', has 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 Section 61-1-14 of Excise Act and in the abovementioned case, he was on



bail, but later on when he could not appear before the learned trial Court, the learned trial Court cancelled the bail of the petitioner and issued his warrant of arrest. Vide order dated 29.11.2019, the learned trial Court had issued proclamation against the petitioner for 24.01.2020.

4. In the order dated 24.01.2020, it has been recorded that the proclamation issued against the petitioner was duly effected. However, as serving constable was not present, notice to serving constable was issued for 25.02.2020. Consequently, the serving Constable appeared before the Court and his statement was recorded by the Court on 21.09.2022. Thereafter, on the same day, by virtue of impugned order, 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. Heard.

8. 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 24.01.2020 was issued by the learned trial Court on 29.11.2019 and affixation had taken place on 22.01.2020. 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. Furthermore, when the proclamation was issued for 24.01.2020 on that day no order for declaring the petitioner to be a proclaimed offender was passed and on the basis of same proclamation the order was passed on 21.09.2022, i.e. without issuing fresh publication. It has also been pointed out by learned counsel for the petitioner that even the affixation of proclamation was not as per prescribed procedures, as the Executing Constable did not publicly read the contents of the abovementioned proclamation.

9. 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.

10. Per contra, the learned State Counsel has argued that the petitioner is a person, who last appeared before the Court in the year 2019 and thereafter he continued to abscond. 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 violated the conditions of bail with impunity, by taking the law in his own hands. 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 the benefit of any technical defect, if any, which might have occurred, inadvertently, in the process of declaring the petitioner to be a



proclaimed offender.

11. The record has been perused carefully.

12. 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 Kuldeep Singh dated 22.01.2020 reads as under:-

“It is requested that a copy of notice has been affixed outside the main gate of the house of the accused, second copy of notice has been affixed in the public area and third copy of the notice has been affixed on notice board of the Hon’ble Court. Report on original copy is submitted before this Hon’ble Court for further action.”

13. A perusal of the record further shows:-

- (a) that the learned trial Court declared the petitioner to be a proclaimed offender on 21.09.2022 on the basis of a proclamation which was issued for appearance on 24.01.2020;
- (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 24.01.2020 and the proclamation was affixed on 22.01.2020;
- (c) that the proclamation was not read at a conspicuous place in the locality, where the petitioner was residing.



14. A bare perusal of the abovementioned statement of the Executing Constable shows that the said Executing Constable did not read the proclamation at the conspicuous place in the locality where the petitioner last resided. The order dated 21.09.2022 shows that merely on the basis of abovementioned statement of the Executing Constable, which was not in conformity with the statute the petitioner has been declared a proclaimed person.

15. With regard to the above-mentioned procedure adopted by the Executing Constable, it is relevant to mention here that Section 82(2) of CrPC 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.”

16. 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.

17. 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)’.

18. In addition to above, it is also relevant to mention here that the statement of Executing Constable nowhere depicts that the proclamation was affixed at a public place in the vicinity where the petitioner ordinarily resides, nor it was pasted on the notice board of the Court, as prescribed under Section 82(2)(i)(b) & (c) of CrPC. Thus, the impugned order declaring the abovesaid person to be a proclaimed person/proclaimed offender is defective and not sustainable in the eyes of law. Similar view has been taken by this High Court in the cases of ‘Pal Singh Santa Singh v. State AIR 1955 Punjab 18 and Tajinder Singh v. State of Punjab (CRM-M-21736- 2024)’, decided on 07.05.2024. On this account also, the abovementioned proclamation seems to be defective.

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. non-reading of summons in public place, not providing 30 days' period to the petitioner to appear before the Court after affixation of proclamation, and not issuing fresh proclamation for the date when impugned order was passed, it is hereby held that the impugned order dated 21.09.2022, passed by the learned trial Court is perverse, defective and unsustainable in the eyes of law. Resultantly, the present petition is hereby allowed and the impugned



order dated 21.09.2022 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. Thus, 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).

(SURYA PARTAP SINGH)
JUDGE

15.01.2026
Manoj Bhutani

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