HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Miscellaneous (Petition) No. 6871/2026
CNR: RJHC010790832026 | URN: CRLMP / 12058U / 2026

1. Sudha Devi W/o Shri Chandra Kant Aggarwal, Aged About 48 Years, Ex Sarpanch Village Barloot Ps Barloot District Sirohi Raj
2. Nathu Lal S/o Shri Sankha Ram Meena, Aged About 50 Years, R/o Vpo Kesharpura Tehsil Sheoganj District Sirohi At Present Working As Garm Vikas Adhikari Ps Sirohi Raj

----Petitioners

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s)	:	Mr. Abhishek Aggarwal.
For Respondent(s)	:	Mr. Prem Singh Panwar, PP.

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

10/08/2026

1. By way of present criminal misc. petition, the petitioners seek quashing of orders dated 14.07.2025 and 29.07.2025 passed by learned Chief Judicial Magistrate, Sirohi, District Sirohi in Criminal Original Case No.907/2013 (2008/2014) whereby, learned trial court forfeited their bail bonds and also directed to initiate the proceedings under Section 446 Cr.P.C. against them; so also the order dated 06.08.2025 whereby, the petitioners have been declared as absconders and directions were also issued to initiate proceedings under Sections 82 & 83 Cr.P.C. against petitioners.

2. Learned counsel for the petitioners submits that on the fateful day the petitioners were unable to appear before trial court due to unavoidable circumstances. They were not properly informed by their counsel about requirement of their personal appearance in the trial proceedings. Despite these circumstances, the learned trial court did not consider the petitioners' grievances and ordered the forfeiture of their bail bonds. Additionally, the learned court below initiated proceedings under Sections 82 & 83 Cr.P.C. against them and under Section 446 of the Cr.P.C. as well. The petitioners' inability to appear was due to unforeseeable circumstances beyond their control.

3. Due to a lack of communication coupled with the misunderstanding created by unavoidable circumstances, it created an impression that the pending criminal proceedings before the trial court have been dropped against them, and they thus became lax in following up on the matter before the learned trial court. Dereliction on the part of the petitioners, under no circumstances, can be termed as intentional, canvasses the learned counsel for the petitioners. Therefore, it was argued that the arrest warrant issued against the petitioners may be converted into bailable warrant.

4. *Per contra*, learned Public Prosecutor opposed the submissions advanced by the learned counsel for the petitioners.

5. In somewhat similar circumstances, the Punjab and Haryana High Court rendered a judgment in case of ***Mohammad Haras Vs. State of Punjab & Ors.***, *relevant whereof, for ready reference, is reproduced as below :-*

"6. No doubt, learned trial Court has got discretion to cancel the bail, however, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford him an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned Judge, Special Court, Sangrur in the instant case. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

7. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein"

6. As regards the directions issued by the learned trial court to proceed against the sureties under Section 446 Cr.P.C., the same is also a serious procedural fallacy committed by the learned court below and cannot be sustained. In a reported case of ***Varinder Singh Vs. State of Punjab,*** Punjab and Haryana High Court has held as under:-

"9. In the light of the statutory provisions of sections 444 and 446 of the Code and, the observations recorded above, I am of the opinion that the following procedure and principles governing the discharge of a surety and when necessary, for forfeiting the bond and the further steps to be taken for imposing the penalty upon the surety need to be kept in mind by the courts :-

A. DISCHARGE OF SURETY

A.1 . Surety can seek discharge at any stage : An individual who has stood surety for someone released on bail has the right to apply to the Court to be discharged from his responsibilities. He can seek a complete discharge from the bond.

A.2. Warrant of Arrest for accused: Upon receiving the application from the surety, the Court will issue a warrant of arrest for the person concerned who was released on bail to be produced before the Court.

A.3 Appearance of the bailed Person: Once the person concerned is brought before the Court through the warrant of arrest or otherwise appears, the Court shall direct the surety bond to be discharged.

A.4. Finding New Sureties: Once the Court orders the discharge of the bond for the surety, the person who was released on bail will be required to find other sufficient surety.

A.5. Consequences of Failure: If the person who was released on bail fails to find other sufficient surety as required, the Court may commit him to jail.

B. FOR FORFEITING THE SURETY BOND AND IMPOSING PENALTY

B.1 Forfeiture of bond and proof :- If a bond is executed for the appearance of an individual before a court or for the production of property and it is proven to the satisfaction of the court that the bond has been forfeited, the court must record the grounds for such proof. Similarly, if a bond is forfeited in any other context, the court must also record the grounds for forfeiture.

B.2 . Notice and penalty :- The court may then call upon the person who is bound by the bond (surety) to either pay the penalty specified in the bond or to show cause why the penalty should not be paid. If sufficient cause is not shown and the penalty is not paid, the court can take action to impose the penalty.

B.3 Discretionary Remission :- The court has the discretion to remit (reduce) a portion of the penalty and enforce payment only for the remaining amount, implying that forfeiture of the bond by itself does amount to imposition of the penalty and a specific order has to be passed for imposing penalty.

B.4 Civil imprisonment in default of payment of penalty If the penalty imposed is not paid or cannot be recovered, the surety may be liable for imprisonment in a civil jail for a period up to six months.

B.5. Surety's death :- If a surety to a bond dies before the bond is forfeited, his estate is relieved of any liability related to the bond.

B.6. Use of Conviction as evidence :- If a person who has provided security under section 106 or section 11 or section 360 of the Code is convicted of an offence the commission of which constitutes a breach of the conditions of his bond or of a bond executed in lieu of his bond under sectin 448 of the Code (for a minor), a certified copy of the court's judgment can be used as evidence against the surety. The court will presume that the offense was committed by the same person unless evidence to the contrary is provided."

7. Qua issuance of process under Sections 82 & 83 of Cr.P.C. against the petitioners herein, reference may be had to a Punjab and Haryana High Court judgment rendered in case of ***Pradeep Kumar Vs. State of Punjab and Anr.***, decided on 23.08.2023. Relevant thereof is extracted hereinbelow:-

"13.1 The declaration of an individual as a proclaimed person or offender, as contemplated under Section 82 of the Code of Criminal Procedure (hereafter referred to as 'the Code'), carries with it the consequential implication of attachment and sale of his property as delineated in Sections 83, 84, and 85 of the Code. Furthermore, such a declaration triggers the criminal liability of the individual under Section 174-A of the Indian Penal Code, with a potential sentence of up to seven years of imprisonment, coupled with a monetary penalty. This, in turn, has profound and far-reaching ramifications, significantly affecting the fundamental rights to life, liberty and property of the

concerned individual. Hence, it becomes imperative that the Courts meticulously adhere to the statutory requirements in letter and spirit both, duly reflecting their compliance on the record prior to pronouncing an individual as a proclaimed person or offender and invoking criminal liability under the aforementioned section.

13.2 Section 82(1) of the Code mandates that a proclamation shall require the concerned individual to appear at a specified place and time, with no less than thirty days' notice from the date of proclamation publication. Sub-Section (2) provides comprehensive guidance on the publication of proclamations, while sub-Section (3) firmly establishes that a written statement by the issuing Court shall be conclusive evidence of compliance with the requirements of this Section. Additionally, Section 83(1) empowers the Court, to order the attachment of any property, whether movable or immovable, belonging to the proclaimed individual, for reasons recorded in writing.

13.3 In cases where an accused person fails to appear even after publication of the proclamation under Section 82(1) of the Code, the Court can initiate action as per procedure outlined in Sections 83, 84, and 85 of the Code for the attachment and sale of their property. Furthermore, the Court may proceed with the examination of witnesses in the individual's absence, as stipulated in Section 299 of the Code.

x-x-x-x-x

19. Before parting with the case, having had the benefit of judgment in Sunil Tyagi supra, it is considered desirable to frame guidelines for issuance of a proclamation under Section 82 of the Code of Criminal Procedure, it's publication, declaring the concerned person as 'proclaimed person' or 'proclaimed offender' and where considered necessary, to invoke criminal proceedings against person for offence under Section 74-A of IPC (Sic 174-A). Accordingly, the following guidelines are being framed:

Issuance of proclamation :

i. Preceding the issuance of the proclamation under section 82 Cr.P.C., the Court must deliberate upon its previous efforts to secure the presence of the through other legally permissible means. These efforts encompass the issuance of summons, the execution of bailable and/or non-bailable warrants against the accused. The Court must thoroughly document the results stemming from these endeavours, accompanied by pertinent facts and comprehensive details. It is incumbent upon the Court to satisfactorily ascertain that the individual in question has indeed absconded or is concealing himself to evade execution of warrant of arrest.

*ii. The phrase **"reason to believe,"** as articulated in Section 82 of the Code of Criminal Procedure, signifies that the Court must derive its belief from the available evidence and materials that the concerned person has absconded or is concealing himself to evade execution of warrant of arrest.*

iii. Furthermore, in the proclamation, it must be set forth as to where and when the concerned individual must present himself. A designated location and time must be stipulated. Importantly, the

specified date and time for appearance should not be less than a thirty-day from the date of publication of the proclamation.

Publication of proclamation–

iv. The publication of a proclamation, as outlined in Section 82(2) of the Code of Criminal Procedure, mandates adherence to all three prescribed modes, namely:

(a). The public reading of the proclamation in a conspicuous location within the town or village where the individual ordinarily resides.

(b) The affixation of the proclamation at a prominent spot at the individual's house or homestead.

(c) The display of the proclamation at a prominent location within the precincts of the court house.

v. All the aforesaid three modes of publication of a proclamation have to be adhered to. Failure to follow all or any of them renders the proclamation invalid in the eyes of the law. This is because the three sub-clauses (a) to (c) are mutually exclusive.

vi. If the Court so feels, in addition to the aforementioned trio of methods for securing the accused's presence, it may, at its discretion, also direct the publication of a copy of the proclamation in a daily newspaper circulating within the geographical area where the said individual ordinarily resides.

vii If the Court, in its discretion orders publication of proclamation in newspaper, it shall also direct that the newspaper agency, upon the publication of the proclamation in the newspaper, shall dispatch a copy thereof to the accused's ad dress, as is the procedure observed in civil matters, in terms of Order 5 Rule 10 of the Code of Civil Procedure. In essence, this supplementary measure ensures that the accused is duly apprised of the legal proceedings against him.

Declaration as "proclaimed person" or "proclaimed offender:

viii. Prior to the declaration of the concerned individual as a "proclaimed person" or "proclaimed offender," the Court shall pass a speaking order stating relevant facts and record its satisfaction that the proclamation has been duly and properly published in the prescribed manner.

ix. Furthermore, it must ensure that a period of not less than thirty days has expired between the date of publication of the proclamation and the date indicated in the proclamation for the individual's appearance. If the interval between the proclamation's publication and the date specified therein for appearance falls short of thirty days, such a publication of the proclamation cannot serve as the foundation for designating the individual in question as a "proclaimed person" or "proclaimed offender."

8. In light of the aforesaid, this Court is of the view that the impugned orders directing the forfeiture of the bail-bonds of the petitioners accused and initiating proceedings under Sections 82 &

83 Cr.P.C. against them and to proceed against their sureties under Section 446 Cr.P.C., deserve to be set aside.

9. Consequently, the impugned orders dated 14.07.2025, 29.07.2025 and 06.08.2025 are set aside. The original bail bonds of the petitioners accused as well as bonds of their sureties are restored and trial to proceed further, in accordance with law. However, it is made clear that the petitioners shall remain present before the learned trial court as and when required by it, during trial.

10. The criminal misc. petition is disposed of accordingly.

11. Pending application(s), if any, also stand disposed of.

(KULDEEP MATHUR),J

37/Tikam Daiya