



2026:DHC:35



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 12th November, 2025***
Pronounced on: 05th January, 2026

+ **CRL.M.C. 3505/2025**

AVINASH SINGH

S/o Rajveer Singh

R/o Village Sewaith Crossing,

Shiv Valley Colony, Soraon, Prayagraj

.....Petitioner

Through: Mr. Naveen Panwar, Advocate.

versus

STATE

Govt. of NCT of Delhi

Through SHO

PS Crime Branch

Pocket 2, Sector 11,

Rohini, Delhi-110085

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.A. 15470/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CRL.M.C. 3505/2025

3. Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the Petitioner, Avinash Singh for quashing of the Impugned Order dated



07.03.2022 whereby the learned Trial Court declared him a *Proclaimed Offender* and the Order dated 11.09.2024 *vide* which the learned Trial Court took cognizance for the offence under *Section 174A of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC')* in respect of the FIR No. 345/2019 under Section 20/25/29 of the NDPS Act, 1985, dated 03.12.2019, registered at Police Station Crime Branch.

4. ***Briefly stated***, on 03.12.2019, at around 08:00 am, on the basis of secret information that a truck would be coming between 10:00 am to 11:00 am at Dr. Hedgewar Marg, Near Paper Market, DDA Park for supply of *Ganja* near Ghazipur, Delhi, a raid was organized. A truck bearing Registration No. UP 70 BT 1055 was found parked on the main road and the person, who was present over the truck, was found trying to uncover the canvas by loosening the ropes. He was identified as Sonelal @ Sonu. After sometime, another person, namely, Raju came to help him to unload the blue colour plastic drum and it was kept on the footpath. In the meanwhile, the raiding team apprehended both the accused and on search, total amount of 280 kg was recovered.

5. The role assigned by the Prosecution to the Petitioner, was that of being the owner of the Truck from which the recovery was affected. The Applicant was arrested on 05.12.2019.

6. The Charge-Sheet was filed in the Court. This Court in the Writ Petition (C) 2/2020, titled as *Court on its Motion vs. Govt. of NCT of Delhi vide* Order dated 25.03.2020 gave directions pursuant to which the Petitioner was released on Interim Bail on medical/humanitarian grounds on 04.11.2020.



7. The Petitioner stated that at the time he was granted Interim Bail, he was residing and a resident of 166, Nawabpur, Urf Khanpr, PS Mau Aima, District Prayagraj, Uttar Pradesh. Due to some differences with the family, the wife and the children, shifted to a new address i.e. Village Sewaith Crossing, Shiv Valley Colony, Soraon, Prayagraj, which was in the name of the Petitioner's wife i.e. Ms. Sonam Singh. The Petitioner after getting the released on Interim Bail also started residing in the house of his wife with the children. Then change of address was not *mala fide*, but for the reasons stated therein. The Petitioner was unaware that his presence was required before the Court.

8. The learned Trial Court finding his absence during the trial, issued warrants and eventually declared him a Proclaimed Offender *vide* Order dated 07.03.2022. The Petitioner was apprehended on 03.04.2024 by the Police from *Dhaba*, whereafter the Petitioner claims that he became aware that the Police had been searching for him since he had neither surrendered before the Jail nor appeared in the Court.

9. The Petitioner filed *Regular Bail Application* before the learned Trial Court, but it was dismissed. His Regular Bail Application filed before this Court *vide* Bail Appln. No. 2330/2024 was also dismissed *vide* Order dated 19.03.2025.

10. The Order dated 07.03.2022 declaring the Petitioner as Proclaimed Offender under Section 82 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*), has been challenged **on the grounds** that the Charge-Sheet has been filed for the offences under NDPS Act, which do not fall in the category of offences defined under Section 82(4) Cr.P.C. A person can be declared as a Proclaimed Offender only in respect



of the offences specifically provided under Section 82(4) Cr.P.C. For all other offences, the person can only be declared as a *Proclaimed Person*, as has been held in the case of Sanjay Bhandari vs. State (Govt. of NCT of Delhi), Crl. Rev. P. No. 223/2018, decided on 31.07.2018 by this Court and Rishabh Sethi vs. State of Rajasthan & Ors., Petition No. 5767/2017, decided by the Rajasthan High Court.

11. Reliance is also placed on Arun Kumar Parihar vs. State (Govt. of NCT of Delhi), MANU/DE/0590/2021, decided on 26.03.2021.

12. It is, therefore, submitted that if a person *qua* whom the declaration has been published under Section 82(1) Cr.P.C. would be deemed as a *Proclaimed Offender* under Section 82(4) Cr.P.C, then the entire Section 174(A) IPC would be rendered otiose and redundant.

13. This Court in the case of Sanjay Bhandari vs. State (Govt. of NCT of Delhi), Crl. Rev.P. No. 223/2018, decided on 31.07.2018 had held that there is no provision other than Section 82(4) for pronouncing a person as a Proclaimed Offender and Section 82(4) applies only in respect of the offences specified under the said sub-Section.

14. *The Impugned Order declaring the Petitioner as Proclaimed Offender is therefore bad in law.*

15. The Petitioner has further submitted that the statement of his neighbour, Malikdeen Singh was recorded, who has stated that “*the Petitioner along with his family, has gone to some unknown place and whereabouts are not known.*” It is submitted that the Petitioner had shifted to Shiv Colony, Valley Colony, Prayagraj but the Police never visited and verified his said address. He had therefore, no knowledge about the adverse proceedings undertaken against him. It can be seen from his Arrest Memo



dated 03.04.2024 that the address of the Petitioner, had not been verified by the Police.

16. It is, therefore, submitted that the Impugned Order dated 07.03.2022 declaring him as Proclaimed Offender, be set-aside and also the Order dated 11.09.2024 under which the cognizance has been taken under Section 174(A) Cr.P.C. against him, be also set-aside.

Submissions heard and the record perused.

17. Admittedly, the Petitioner was arrested in the present case under Section 20/25/29 of the NDPS Act on 05.12.2019. Further, he was released on Interim Bail *vide* Order dated 04.11.2020 on account of prevailing COVID-19 situation. It is also reflected from the Orders of the learned Trial Court that he failed to appear on 02.09.2021. NBWs were issued against him as well as, his surety. Mr. Anurag Singh, his brother, who had stood surety for him, appeared before the learned ASJ on 01.10.2021 and submitted that he had no knowledge about the whereabouts of his brother/Avinash Singh. Consequently, his surety bond was forfeited and he deposited Rs.30,000/- in the Court.

18. Thereafter, the proceedings under Section 82 Cr.P.C. were initiated. The process server, ASI Shiv Charan duly executed the process and his Statement was recorded in the Court by the learned ASJ, on 07.03.2022. He stated that he had visited the residence of the Petitioner in Prayagraj, Uttar Pradesh and had found the premises to be locked. The Statement of neighbour, Malikdeen Singh, was recorded who stated that the Petitioner along with his family has shifted to some unknown place. The whereabouts of which were not known. Consequently, the Petitioner was declared as a Proclaimed Offender.



19. **The first contention** of the Petitioner is that since the offence under NDPS Act, did not feature in the categories of offences defined under Section 82(4) CrPC, he could not have been declared as a *Proclaimed Offender* and the Impugned Order is *per se* bad in law.

20. In the case of Sanjay Bhandari (supra), the Co-ordinate Bench of this Court while considering the scope of Section 82(4) Cr.P.C. observed that there is a distinction between a person being declared a *proclaimed person* for the offences under IPC and a person getting declared *Proclaimed Offender* for the offences specifically mentioned in Section 82(4) CrPC. It was noted that there are adverse consequences stipulated in CrPC and IPC *qua* a person in respect of whom proclamation under Section 82 Cr.P.C is published.

21. Section 40 Cr.P.C provides that every person employed in connection with the affairs of the village and every person residing therein, would communicate to the nearest Magistrate or to the Police Station any information that he may possess in regard to the person, place or passage where such person whom he knows, or reasonably suspects to be a Proclaimed Offender. Section 40(2) provides that expression '*Proclaimed Offender*' includes any person proclaimed as an offender by any Court or authority in the territory. Section 41 Cr.P.C empowers every Police Officer to arrest any person, who has a proclamation against him. Likewise, Section 43 Cr.P.C empowers every private person to arrest such proclaimed offender. Section 73 Cr.P.C. authorises Chief Judicial Magistrate to direct a warrant to any person within his local jurisdiction for his arrest, who is being declared as a Proclaimed Offender.



22. That there is a distinction between a *proclaimed person* and a *proclaimed offender*, can be made out from Section 83 and 84 CrPC, which provides for attachment of a person absconding and who has been declared a *Proclaimed Person*, while Sections 42, 43 and 73 CrPC deal with arrest of a Proclaimed Offender, without warrants.

23. The question, which now arises, is what is the distinction between a '*Proclaimed Person*' and a *Proclaimed Offender*. As Section 82 (1), (2), & (3) Cr.P.C. defines the procedure to be followed for issuing a proclamation and recording of the Statement of the person in the Court, who has executed the publication.

24. However, sub-Section 4 of Section 82 Cr.P.C further provides that for the Sections specified therein, a person would be declared as a *Proclaimed Offender*. It is quite evident that for all other offences, the person is declared as a *Proclaimed Person*.

25. That there is a clear distinction between a *Proclaimed Person* and a *Proclaimed Offender*, can also be made out from the harmonious and contextual construction of Section 82 read with Section 174 and 174(A) IPC which prescribes different Sentence for a proclaimed person and a Proclaimed Offender.

26. S.174A IPC reads as under:

"174A - Non-appearance in response to a proclamation under section 82 of Act 2 of 1974 -

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub



section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

27. The intention of the legislature to make stringent penal provision of Section 174(A) IPC is to secure the presence of an absconder against whom a proclamation has been issued. Section 174(A)(1) refers to Section 82(1) (which provides for issuance of a proclamation against an accused, who absconds or conceals himself) and provides *an imprisonment upto three years for a Proclaimed Person*, while it provides a punishment of upto 07 years for a person, who has been declared as a *Proclaimed Offender* under Section 82(4) Cr.P.C.

28. It has been rightly contended by the Petitioner that the offence under NDPS Act, does not feature in the category of the offences defined under Section 82(4) and therefore, he could not have been declared as a *Proclaimed Offender but a Proclaimed Person*, as has also held in the case of Sanjay Bhandari (supra). It is, therefore, held that though the procedure to be followed for a Proclamation to be issued is the same, but it is only for the offences specified in Section 82(4) that a person can be declared as a *Proclaimed Offender* and all other persons are to be considered as *Proclaimed Person*.

29. The Impugned Order dated 07.03.2022 of learned ASJ, therefore, is erroneous to the extent of declaring the Petitioner as a *Proclaimed Offender*. **He be considered as a Proclaimed Person.**

30. The *second contention* is ***that the proclamation has not been issued in accordance with the prescribed procedure.*** No proclamation was carried out at the address, where the Petitioner was residing.



31. It is evident that there are adverse consequences attached to the person against whom the proclamation has been issued and therefore, it is pertinent that there must be strict compliance of the procedure prescribed under Section 82 Cr.P.C., while declaring a person as a Proclaimed Person or a Proclaimed Offender.

32. The Proclamation having been validly issued against him at his last known address i.e. 166, Nawabpur, Urf Khanpr, PS Mau Aima, District Prayagraj, Uttar Pradesh.

33. The Petitioner himself has admitted that on account of the family differences, his wife and children had shifted to another premises, and on being released on Bail, he joined them. There was no intimation to the Court or any other agency, about the change of address.

34. Interestingly, Anurag Singh, the brother of the Petitioner, who had stood surety for him, on being served with the Notice, appeared in the Court on 01.10.2021 and stated that he was not aware of the whereabouts of the Petitioner. Incidentally, he on the same date, deposited the surety amount of Rs.30,000/-. It is difficult to believe that the address of the Petitioner would not be known to his brother.

35. Furthermore, when the Process Server went to the recorded address of the Petitioner on 13.11.2021, the house was found locked and the statement of the neighbour, Malikdeen Singh, was recorded, who also stated that the Petitioner has shifted, but his whereabouts are not known.

36. It is again difficult to believe that while shifting to another premise, the Petitioner would not have left the information with his neighbours. Clearly, the Proclamation has been executed at the last known address, in accordance with law.



37. It cannot be said that the procedure followed under S.82 Cr.P.C. was faulty or that the impugned Order dated 11.09.2024 is liable to be set aside.

Order:

38. **The Impugned Order** dated 07.03.2022 declaring the Petitioner as a Proclaimed Offender, **is modified** to the extent that he be ***declared as a Proclaimed Person***. However, there is no infirmity in the Order dated 11.09.2024 *vide* which the cognizance has been taken against him for the offence under Section 174(A) IPC.

39. There is also no ground for quashing of the Order dated 07.03.2022 *vide* which the cognizance under Section 174(A) IPC, has been taken.

40. It is hereby, clarified that the observations made herein, do not constitute an expression on the merits of the trial under Section 174(A) IPC.

41. The Petition is disposed of accordingly. Pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 05, 2026/RS