

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 1161/2026

Suresh Garg S/o Shri Madanlal Garg, Aged About 44 Years,
Resident Of Sur Basti Khandel, Police Station Kunwariya, At
Present J.k. Circle Bhawani Nagar, Gali No.3,tehsil And District-
Rajsamand.

----Petitioner

Versus

1. State Of Rajasthan, Through The Public Prosecutor.
2. Gopallal S/o Shri Nanuram, Resident Of Lapsiya, Police
Station Kunwariya, Tehsil And District-Rajsamand

----Respondents

For Petitioner(s) : Mr. Vikram Sharma

For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

10/02/2026

By way of filing present misc. petition under Section 528 BNSS the petitioner seeks to challenge order dated 15.12.2025 passed by learned Judicial Magistrate, Railmagra, District Rajsamand in Criminal Case No.153/2020 (Gopal Lal Vs. Suresh Garg), whereby the petitioner has been declared absconder and proceedings under Section 82 and 83 Cr. P.C., have been issued and he has been summoned through warrant of arrest.

This Court has considered the arguments raised by learned counsel for the petitioner and has perused the order dated 15.12.2025.

Counsel submits that the petitioner was not informed by his counsel of the next date of hearing and he was assured earlier that whenever his presence would be required, he would be informed.

He further submits that due to illness of the counsel he failed to inform and as a result which bailable warrants were issued. He is not residing at the given address, therefore, the warrants were not served on him. It is not the case that he was evading service of notices.

Counsel further submits that the petitioner is a Government servant and hence he could never evade service of notices and his non-presence was only due to the fact that he was not informed about the date by his counsel and only when he approached the counsel he came to know about the fact.

This Court upon considered the submission made and finds sufficient reason for non-appearance of the petitioner.

The Co-ordinate Bench of this Court while dealing with the issue of initiation of proceedings under Section 82 and 83 Cr. P.C., vide its order dated 18.09.2024 allowed **S.B. Criminal Misc. Petition No.6290/2024 (Visha Bhai Vs. State of Rajasthan)** observing that :-

*"7. Qua issuance of process under Sections 82 & 83 of Cr.P.C. against the petitioner 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.3**, 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, its 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 address, 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."

In light of observations made by Co-ordinate Bench of this Court vide order dated 18.09.2024 in ***Visha Bhai Vs. State of Rajasthan (supra)***, this Court is inclined to allow the present criminal misc. petition.

The impugned order 15.12.2025 directing for forfeiture of bail-bonds of the petitioner and initiation of proceedings under Section 82 and 83 Cr. P.C., against the petitioner is hereby quashed and set aside.

The original bail bonds of the petitioner accused as well as bonds of his sureties are restored and the trial court is directed to proceed in accordance with law.

The petitioner shall appear before the learned trial court on the next date and continue to do until completion of trial.

(BALJINDER SINGH SANDHU),J