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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28th June, 2021

+ CRL.M.C. 5328/2013

SUNIL TYAGI

..... Petitioner

Through: Mr. Ajayinder Sangwan,
Mr. Raj Kumar Sharma,
Mr. Arun Rathi and
Mr. Summinder Paswan,
Advocates

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through: Ms. Nandita Rao, ASC (Crl.)
with Ms. Gayatri Virmani and
Mr. Amit Peswani, Advocates
Mr. Rajshekhar Rao, Senior
Advocate as *Amicus Curiae*
with Ms. Aanchal Tikmani,
Advocate
Mr. Vikas Pahwa, Senior
Advocate with as *Amicus*
Curiae with Ms. Raavi
Sharma, Advocate
Mr. Nikhil Goel, SPP with
Mr. Vinay Mathew, Advocate

+ CRL.M.C. 4438/2013

TANMAY KUMAR

..... Petitioner

Through: Dr. L. S. Chaudhary,
Advocate with Mr. Ajay
Chaudhary, Mr. Vishesh
Kumar, Mr. Parambir Singh,
Mr. Anurag Singh Tomar and
Mr. Veeresh Choudhary,
Advocates

versus

STATE

..... Respondent

Through: Ms. Nandita Rao, ASC (Crl.)
with Ms. Gayatri Virmani and
Mr. Amit Peswani, Advocates
Mr. Rajshekhar Rao, Senior
Advocate as *Amicus Curiae*
with Ms. Aanchal Tikmani,
Advocate
Mr. Vikas Pahwa, Senior
Advocate with as *Amicus*
Curiae with Ms. Raavi
Sharma, Advocate
Mr. Nikhil Goel, SPP with
Mr. Vinay Mathew, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The requirements of justice give an occasion for the development of new dimension of justice by evolving juristic principles for doing complete justice according to the current needs of the Society. The quest for justice in the process of administration of justice occasions the evolution of new dimensions of the justice. *J.S. Verma, J.*, in his Article "*New Dimensions of Justice*", (1997) 3 SCC J-3 observed that:

"...Justice is the ideal to be achieved by Law. Justice is the goal of law. Law is a set of general rules applied in the administration of justice. Justice is in a cause on application of law to a particular case. Jurisprudence is the philosophy of law. Jurisprudence and Law have ultimately to be tested on the anvil of administration of justice. 'Law as it is', may fall short of 'Law as it ought to be' for doing complete justice in a cause. The gap between the two may be described as the field covered by Morality. There is no doubt that the development of the law is influenced by morals. The infusion of morality

for reshaping the law is influenced by the principles of Equity and Natural Justice, as effective agencies of growth. The ideal State is when the rules of law satisfy the requirements of justice and the gap between the two is bridged. It is this attempt to bridge the gap which occasions the development of New Jurisprudence.

The existence of some gap between law and justice is recognized by the existing law itself. This is the reason for the recognition of inherent powers of the court by express provision made in the Code of Civil Procedure and the Code of Criminal Procedure. The Constitution of India by Article 142 expressly confers on the Supreme Court plenary powers for doing complete justice in any cause or matter before it. Such power in the court of last resort is recognition of the principle that in the justice delivery system, at the end point attempt must be made to do complete justice in every cause, if that result cannot be achieved by provisions of the enacted law. These powers are in addition to the discretionary powers of courts in certain areas where rigidity is considered inappropriate, e.g., equitable reliefs and Article 226 of the Constitution. ...”

2. The petitioners in both these cases were declared as *Proclaimed Offenders* without following due process of law. In CRL. A. 5328/2013, the learned Magistrate declared the petitioner as a *proclaimed offender* without satisfying himself as to the factum of service of notice upon the petitioner as respondent no. 2 was unable to furnish the complete address of the petitioner and the notices were not sent to the petitioner at the correct address. All addresses furnished by the respondent were found to be incorrect. In CRL. M. C. 4438/2013, the petitioner was declared a *proclaimed offender* but he was never served any summons/warrants. Vide judgment dated

07th January, 2021, this Court allowed the both petitions and quashed the impugned orders declaring the petitioners as “*Proclaimed Offenders*”.

3. During the course of the hearing dated 27th November, 2013, Mr. Gopal Subramaniam, learned senior counsel present in Court in some other case pointed out that the orders under Section 82 of the Code of Criminal Procedure (hereinafter referred to as CrPC or the Code) were passed in a routine manner and guidelines are necessary to ensure that orders under Sections 82 and 83 CrPC are passed after following due process of law. It was suggested that guidelines be laid down by this Court in this regard.

4. Vide order dated 07th March, 2014, Mr. Surinder S. Rathi, Registrar, Delhi High Court, who was then posted in Delhi State Legal Services Authority (DSLISA) and had done extensive research on the subject, was requested to submit his research papers. Mr. Rathi submitted his research papers along with the draft of the suggested guidelines. As the matter progressed, Mr. Rathi submitted his first report which was considered by Delhi Police as well as CBI and after thorough deliberations, he submitted his Final Report before this Court. Mr. Rathi in his report has dealt with the provisions relating to the declaration of a *Proclaimed Offender* at the stage of investigation as well as trial and post conviction. Mr. Surinder S. Rathi has also shared a Research Paper titled ‘Unified Criminal Justice System (UCJS)’. UCJS aims at achieving a unified digitization of criminal investigation system right from the stage of registration of FIR and investigation till up to trial and appeal along

with seamless exchange of data between duty holders including Police, Judiciary, Prisons, Prosecution, Forensics, Legal Services and others, at all stages.

5. Mr. Dayan Krishnan, Mr. N. Hariharan, Mr. Vikas Pahwa, Mr. Rajshekhar Rao, Senior Advocates; Mr. Surinder S. Rathi, OSD-cum-Registrar, Delhi High Court; Mr. Rajiv K. Garg, Advocate and Prof. (Dr.) G.S. Bajpai, Vice Chancellor, Rajiv Gandhi National Law University, Patiala (former Professor of Criminology and Criminal Justice, National Law University, Delhi) assisted this Court as *amici curiae* and submitted valuable suggestions to assist this Court in framing the guidelines.

6. Vide order dated 21st November, 2014, this Court directed Delhi Police as well as CBI to file the status reports with respect to the *Proclaimed Offenders*. Delhi Police and CBI have filed their respective status reports. As per the status report of Delhi Police, 18,541 persons have been declared *Proclaimed persons* out of which 6000 *Proclaimed offenders* were accused of heinous crimes. As regards to CBI, 820 persons were declared as *Proclaimed persons* as on 31st December, 2014 out of which 184 *Proclaimed offenders* and 193 *Absconders* were arrested.

7. Vide order dated 31st July, 2019, Delhi police and CBI were directed to file fresh status reports. As per the fresh status reports of the Delhi Police, number of *Proclaimed persons* have increased to 26,532 as on 31st September, 2019 out of which 3826 *Proclaimed offenders* have been arrested, prosecution has been launched against 1601 *Proclaimed offenders* and properties of 28 *Proclaimed*

offenders have been attached. As regards CBI, further 793 accused persons have been declared as *Proclaimed offenders* between 01st January, 2015 to 31st October, 2019 out of which only 68 *Proclaimed offenders* have been arrested, properties of 21 *Proclaimed offenders* have been attached and prosecution has been launched against 2 *Proclaimed Offenders* under Section 174A IPC.

8. Vide judgment dated 07th January, 2021, this Court directed Delhi Police as well as CBI to constitute an Internal Committee to formulate the suggestions with respect to the *Proclaimed Officer*. Delhi Police as well as CBI have complied with the orders and have submitted their reports contouring their suggestions with respect to *Proclaimed Offender*.

9. This Court is of the view that declaring a person as a *Proclaimed Offender* leads to a serious offence under Section 174A IPC which is punishable for a period upto 3 or 7 years. It affects the life and liberty of a person under Article 21 of the Constitution of India and it is necessary to ensure that the process under Sections 82 and 83 CrPC is not issued in a routine manner and due process of law is followed. The second important aspect is that once a person has been declared as a *Proclaimed offender*, it is the duty of the State to make all reasonable efforts to arrest him and attach his properties as well as launch prosecution under Section 174A IPC.

10. This Court considers it necessary to issue directions in this regard in exercise of inherent powers under Section 482 CrPC read with Section 483 CrPC and Article 227 of the Constitution. Section 482 of the Code of Criminal Procedure empowers this Court to make

such orders as may be necessary to secure the ends of justice in exercise of the inherent powers. Section 483 of the Code of Criminal Procedure, 1973 casts a duty upon every High Court to exercise its continuous superintendence over the Trial Courts to ensure that there is an expeditious and proper disposal of cases. Article 227 of the Constitution also confers on this Court the power of superintendence over all subordinate courts in relation to which it exercises jurisdiction. The paramount consideration behind vesting such wide power of superintendence in this Court is to keep the path of justice clear of obstructions which might impede it. It is the salutary duty of this Court to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process.

Submissions of Mr. Dayan Krishnan, Senior Advocate as Amicus

Curiae

11. One of the fundamental foundations of criminal justice system in India is that the accused of an offence has to be present during the entire process of the criminal trial. The concept of *ex-parte* trial is alien to the Indian legal system as well as the fundamentals of a fair trial enshrined in Article 21 of the Constitution of India. The presence of the accused is necessary both for the framing of the charge and for recording of evidence during the trial.

12. The Criminal Procedure provides different kinds of processes for appearance of accused/suspect which are both compulsive and non-compulsive, as detailed hereinafter. These processes are used by Courts and Police for seeking the presence of the accused before it

during the trial. Over the years, two peculiar problems have arisen while using these compulsive processes. On one hand, people are made *proclaimed offenders* without proper service of summons or execution of warrants. On the other hand, a large number of people who have been declared *proclaimed offenders* ensure that their trials are indefinitely delayed.

13. There is an urgent need to balance the interests of the society on one hand to ensure that these *Proclaimed offenders* are brought to book, and the interests of accused on the other hand that they do not have to face the indignity of being declared a *proclaimed offender* without having known about the factum of issuance of summons or execution of warrants against them by a Court of law. It is respectfully submitted that it is imperative, therefore that the court issues guidelines to ensure that a proper procedure is put in place with the use of modern technology to achieve the above.

14. Chapter VI of the Code of Criminal Procedure provides for ‘*processes to compel appearance.*’ Chapter VI of the Code is divided into four parts:

Part A – Summons (Sections 60 – 69)

Part B – Warrant of Arrest (Sections 70-81)

Part C – Proclamation & Attachment (Sections 82-86)

Part D – Other rules regarding processes (Sections 87 – 90)

15. Part – C of Chapter VI of the Code relates to coercive measures which can be employed by the Court to apprehend a person in respect of whom a warrant of arrest has been issued under Section 73 of the Code.

16. Once the Court is satisfied that any person against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed, then the Court can issue a proclamation against such person and the said proclamation needs to be duly published in some conspicuous part of (a) the town or village where such person ordinarily resides, (b) house or homestead in which such person ordinarily resides or to some conspicuous part of such town or village, and (c) of the Court-house. Additionally, if the Court seems fit, a copy of the proclamation shall be published in a daily newspaper circulating in the place in which such person ordinarily resides.

17. For issuance of a proclamation under Section 82 of the Code, it is necessary that the Court has to be satisfied on the basis of material that a person despite having knowledge of proceeding is avoiding the process issued. The Madras High Court in *Nachi Exports v. Thiruvengadam & Sons*, 2008 CrLJ (NOC) 278 (Mad.) held that the concerned Court should consider factors such as “*the accused was well aware of the NBW of arrest, issued against him, and also regarding the efforts taken by the officer concerned for its execution, and that obviously the accused was evading arrest, by adopting foul play or tactful means.*”

18. Under Section 82(3) of the Code, once a proclamation is issued by the Court in accordance with Section 82(2)(i) of the Code, a statement by the Court issuing proclamation to the effect that the proclamation was duly published shall be treated as conclusive evidence that the proclamation was published on such date. Under

Section 82(4), in respect of specified offences, thirty days after publication of the proclamation, the Court, after making such enquiry or inquiry as it thinks fit, can pronounce the person a *Proclaimed offender* and make a declaration to that effect. Under Section 82(5) of the Code, the declaration under Section 82(4) that such a person is a *proclaimed offender* is also subject to Section 82(2) and 82(3).

19. Under Section 82 of the Code, the Court is required to be satisfied that the warrant could not be executed because the person has absconded or is concealing himself before issuing a proclamation, and also subsequently before declaring him to be a *proclaimed offender*. Similarly, by the virtue of Section 82(5), the concerned Court is required to satisfy itself again at the stage of declaration of a person as *proclaimed offender* under Section 82(4) that the concerned accused has absconded or is concealing himself to avoid the execution of the warrant or the proclamation.

20. The Court is empowered under Section 83 of the Code to order attachment of the movable and/or immovable properties of the Proclaimed person at any time after the issuance of the proclamation under Section 82 of the Code.

21. The legislature by enacting Section 174A IPC has further penalised the non-appearance of a *proclaimed offender*. The very basis of fair trial is threatened if an accused/suspect is declared as a *proclaimed offender* without proper service, or if proclamations and non-bailable warrants are issued in a routine manner. The extent of the problem is evident from the fact that in Delhi, the statistics

provided by the Delhi Police reveal that as on date, there were approximately 18,541 *Proclaimed offenders* in the city of Delhi, out of which 6,000 *Proclaimed offenders* are accused of heinous crimes. The CBI which is a much smaller organisation had 820 *proclaimed offenders* pending for apprehension as on 31st December, 2014, and only a total of 184 *Proclaimed offenders* and 193 absconders had been arrested in the past three years. As on 31st December, 2013, there were 1,540 cases between 2011 and 2013 where an offence under Section 174A IPC was invoked by the authorities

22. The legislature seeing the growing number of *Proclaimed offenders* inserted Section 174A IPC by way of Clause 44 of the CrPC. (Amendment) Act, 2005 (25 of 2005) which was brought into force w.e.f. 23rd June, 2006 *vide* Notification No. SO 923(E) dated 21st June, 2006, hoping that it would be a deterrent for persons fleeing from justice. However, merely making it a penal offence does not seem to have solved the problem in as much as the number of *Proclaimed offenders*, as is evident from statistics of Delhi, seem to have only increased post 2006 when the Section was brought into force.

23. Section 174A IPC penalizes the non-appearance of a person as required by a proclamation published under. In case of non-appearance consequent to a proclamation under Section 82(1) of the Code for a term up to three years/fine/both and in case of a declaration under Section 82(4) of the Code (in respect of offences under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC for a term

upto seven years with fine.

24. The conundrum being faced by this Court in respect of routine issuance and declaration of proclamations is inevitably linked to the processes preceding the issuance of proclamation such as improper issuance and execution of warrants. In *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1, the Supreme Court highlighted that issuance of non-bailable warrants interferes with personal liberty and the Courts should be extremely careful before issuing non-bailable warrants. The Supreme Court further held that warrants, either bailable or non-bailable, should never be issued without proper scrutiny of facts and complete application of mind. What has to be ensured is that the concerned person was made aware about the legal process pending against him. The relevant portion of the judgment in *Inder Mohan Goswami* (supra) is reproduced hereinbelow:

“Personal liberty and the interest of the State

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. *Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.*

When non-bailable warrants should be issued

53. *Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:*

- *it is reasonable to believe that the person will not voluntarily appear in court; or*
- *the police authorities are unable to find the person to serve him with a summon; or*
- *it is considered that the person could harm someone if not placed into custody immediately.*

54. *As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.”*

भाष्यमेव जयते (Emphasis supplied)

25. In **Raghuvansh Dewanchand Bhasin v. State of Maharashtra**, (2012) 9 SCC 791, the Supreme Court issued the following guidelines:

“28. However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above,

it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the courts:

28.1. All the High Court shall ensure that the subordinate courts use printed and machine numbered Form 2 for issuing warrant of arrest and each such form is duly accounted for;

28.2. Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;

28.3. The presiding Judge of the Court (or responsible officer specially authorised for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

28.4. The court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;

28.5. Every court must maintain a register (in the format given below at p. 804), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

28.6. No warrant of arrest shall be issued without being entered in the register mentioned above and the court concerned shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the case concerned;

28.7. A register similar to the one in para 28.5 supra shall be maintained at the police station concerned. The Station House Officer of the police station concerned shall ensure that each warrant of arrest issued by the court, when received is duly entered in the said register

and is formally entrusted to a responsible officer for execution;

28.8. Ordinarily, the courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

28.9. On the date fixed for the return of the warrant, the court must insist upon a compliance report on the action taken thereon by the Station House Officer of the police station concerned or the officer in charge of the agency concerned;

28.10. The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

28.11. In the event of warrant for execution beyond jurisdiction of the court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

28.12. In the event of cancellation of the arrest warrant by the court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the authority concerned, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.”

Format of the Register

Sl No.	The number printed on the form used	Case title and particulars	Name and Partiuclars of the person against whom warrant of arrest is issued (accused witness	The officer/ person to whom directed	Date of judicial order directing arrest warrant to be issued	Date of issue	Date of cancellation, if any	Due date of return	Report returned on	The action taken as reported	Remarks
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(Emphasis supplied)

26. The Supreme Court and different High Courts have repeatedly sought to address the issue of routine issuance of warrants in *Vikas v. State of Rajasthan*, (2014) 3 SCC 321; *Mani Shandly v. State*, (2008) 102 DRJ 578; *G. Sagar Suri v. State*, (2003) 106 DLT 439; *Washeshar Nath Chadha v. State*, (1992) 47 DLT 152; *V.G.K. Senthilnathan v. The Director General of Police, Tamil Nadu Police Headquarters*, (2009) 3 MWN (Cri) 246, and *M/s Jeevan Emu Care Indian (P) Limited v. The State of Tamil Nadu*, (2015) 3 MWN (Cri) 88.

Suggestions for Issuance of Warrants during the Investigation

27. Investigating Officer may apply to a Magistrate for issuance of warrant of arrest where the offence is cognizable and the accused/suspect is evading his arrest.

28. While applying for a warrant, the Investigating Officer must show the efforts made for arresting the accused/suspect.

29. Investigating Officer shall show that the accused/suspect is ordinarily residing at the specific address and that now the accused/suspect is not available at that address due to his deliberate intention to avoid custody in the case in question.

30. No warrant shall be issued against an accused/suspect on the ground of unavailability.

31. Investigating Officer must show that in his opinion interrogation of the accused/suspect is necessary for the just and fair investigation of the offence(s) in question.

32. Such prayers shall be endorsed by the SHOs and Asst. PP/Chief PP as well with declaration that they are satisfied that it is a fit case for issuance of non-bailable warrants.

Suggestions in Respect of Process of Issuance of Proclamation during the Investigation

33. No proclamation shall be issued by a Court *qua* an accused/suspect unless the Police Officer has categorically stated in writing that there exists grounds for arrest.

34. No proclamation shall be issued by a Court *qua* an accused/suspect unless the jurisdictional Assistant Commissioner of Police ratifies in writing that service has been effected and yet the accused/suspect is evading service.

35. No proclamation shall be issued by a Court *qua* an accused/suspect unless the Court records *prima facie* satisfaction to the effect that the accused/suspect has been duly served with a notice/warrant or is satisfied that the accused/suspect has absconded or is concealing himself so that such warrant cannot be executed.

36. No proclamation shall be issued by a Court *qua* accused/suspect merely on the ground that the accused/suspect is not available to the Investigating Officer or the concerned police official for the purpose of joining the investigation.

Measures to Enhance the Efficiency and Accuracy in Execution of Warrants and/or Execution of Proclamations

37. The Investigating Officer or the SHO, shall ensure that they shall personally or through one of their Sub-ordinate official visit the address disclosed by the accused/suspect so as to check its

correctness before or while seeking a warrant of arrest from the Court.

38. The Investigating Officer or the SHO shall record in the case diary the name of at least two respectable persons of the locality of accused/suspect with their contact details like addresses and telephone numbers who ratifies that the address of the accused/suspect mentioned in the applications for seeking warrant of arrest of the accused/suspect is correct and complete. Photocopies of any identity proofs and a photograph of such witnesses shall also be procured by the concerned police officials. For this purpose, a photograph taken by the concerned police official shall be sufficient and the witness will not be required to the police station of the photograph.

39. The Investigating Officer or the SHO must ascertain the additional addresses of the accused/suspect, permanent or the native place address. In the event that the addresses mentioned are located in other jurisdictions/States, the same shall be sought to be verified through a subordinate or by any other means through the local police authorities of the address disclosed.

40. The Investigation Officer or the SHO should ascertain mobile, landline connections, identity cards issued in the name of the accused, email address.

41. The Investigating Officer or the SHO shall take photographs of the dwelling unit of the accused/suspect which is claimed to be the address of the accused/suspect and append the same with the

application for issuance of warrants and initiation of proceedings under Section 82/83 of the Code.

42. The Investigation Officer or the SHO shall ascertain the job profile of the accused/suspect and shall obtain his complete address of his place of work. In cases of private complaint, the complainant shall share all the addresses known and file a documentary proof of the mentioned addresses.

43. The data of the *proclaimed offenders* in cases involving the Delhi Police is available on ZIPNET and should be made accessible to the public.

44. Where the service is required to be undertaken in a foreign jurisdiction, the Trial Courts must issue a warrant, and subsequently a proclamation, only upon being satisfied that the summons has not been able to be served in spite of following the procedure prescribed under the relevant statute of the country where it is sought to be served.

Suggestions of Dr. L.S. Choudhary, Advocate

45. The photograph, telephone/ Mobile No./ Email Id and Aadhaar Card details of the accused should be collected by the Investigating Officer at the time of arrest/FIR.

46. The Investigating Officer should produce the accused before the Court at the time of filing the chargesheet.

47. In proceedings under Sections 82/83 CrPC, the Investigating Officer should take the photographs of the place where he visited to serve summons/ warrants with the date and time.

48. The publication of the proclamation under Sections 82/83 CrPC in the newspaper should be mandatory of the newspaper agency and copy of that newspaper be sent by post to the address of the accused as is being done in Civil matters under Order 5 Rule 10 of CPC. The report of processes under Sections 82/83 CrPC should be made by SHO himself. The statement of the process server should be recorded by the Magistrate.

Submissions of Mr. N. Hariharan, Senior Advocate as Amicus Curiae

49. The expression “*Proclaimed Offender*” includes any person proclaimed as an offender by any Court of authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the Sections of the Indian Penal Code, namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive).

50. If any Court has a *reason to believe* that any person against whom a warrant of arrest has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation.

51. Where a proclamation published is in respect of a person accused of certain specified heinous offences Court may pronounce him a ‘*Proclaimed offender*’ and make a declaration to that effect under Section 82 CrPC.

52. The primary responsibility for securing the arrest of a proclaimed offender is of the local police of the station under whose jurisdiction the accused is a resident. A *proclaimed offender* can be arrested by any police officer without any order from a Magistrate and without a warrant. Any private person can also arrest a proclaimed offender and hand him over without unnecessary delay to a police officer.

53. A list is hung up on the office of each police station and a duplicate is displayed on the police station notice board, of all proclaimed offenders who are absconding in cases registered in the home police station or in cases registered in other police stations.

54. In *Lavesh v. State (NCT of Delhi)*, (2012) 8 SCC 730, the Supreme Court held that anticipatory bail should be not given to an accused who has been declared as an absconder and not cooperated with the investigation. An absconder or a *Proclaimed Offender* in terms of Section 82 CrPC is not entitled to the relief of anticipatory bail.

55. The names of all such *Proclaimed Offenders* are entered in the Police Station Register No.10 (Surveillance Register). The CRO Branch of the SP Office maintains a register of *Proclaimed Offenders* in two parts. It contains the names of all residents of the home district. The names should be entered according to the police station of which the *Proclaimed Offenders* are resident. It further contains the names of all offenders proclaimed in but not resident of the district.

56. The Superintendent of Police periodically revises the list of proclaimed offenders and the name of persons accused of trivial offence or concerned in cases where from lapse of time, no sufficient evidence is on record or is procurable, are omitted after consultation with the District Magistrate and the SP of the district in which such person was proclaimed. Whenever a proclaimed offender is arrested, intimation is sent to the police station and district of which he was a resident so that his name can be struck off the register/list of proclaimed offenders.

57. Every member of the village panchayat, *chowkidar* of the officer employed in connection with the affairs of the village and every person residing in the village must communicate to the nearest magistrate/police station of any person whom he knows or reasonably suspects to be a *proclaimed offender*. As soon as a police station receives intimation of the proclamation of a resident of its jurisdiction, the *sarpanch* and *chowkidaar* of the village where the *proclaimed offender* resides or has relatives or friends that he is likely to visit, are informed about the same.

58. Whoever knowingly harbours a proclaimed offender to prevent his apprehension is liable to be punished under Section 216 IPC with imprisonment upto 7 years in certain cases. The Court issuing a proclamation may order the attachment of any property belonging to the proclaimed person in order to compel his appearance before the Court under Section 83 CrPC.

59. The Court pronounces an absconder as a *Proclaimed offender* if he is accused of any of the following offences: Murder; Culpable

homicide not amounting to murder; Kidnapping or abducting in order to murder; Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.; Committing theft after making preparation for death, hurt or restraint in order to commit the theft; committing robbery or attempting to do so; causing hurt in committing robbery; committing dacoity/dacoity with murder; committing robbery/dacoity with attempt to cause death or grievous hurt; attempting to commit robbery/dacoity when armed with deadly weapon; preparing to commit or assembling to commit dacoity; or belonging to a gang of dacoits; Causing mischief by fire or explosive substance with intent to destroy house, etc; Committing house-trespass in order to commit offence punishable with death; causing grievous hurt/death while committing lurking house-trespass or house-breaking; being member of group that causes grievous hurt/death while committing lurking house-trespass or house-breaking by night.

60. If during the course of investigation of a case sufficient evidence justifying the arrest of an accused is collected but the accused is found evading arrest, a warrant of arrest should be obtained immediately and the Investigating Officer should make all possible efforts to trace the whereabouts of the accused.

61. In *State of Maharashtra v. Dawood Ibrahim Kaskar*, 1997 (2) Crimes 92 (SC), the Supreme Court held that a warrant of arrest can be issued by the Court against a person, who is accused of a non-bailable offence and is evading arrest. Enquiries should be made from his relatives, friends and other persons who are likely to be

aware of his movements and they should all be warned against harbouring him.

62. If the accused continues to evade arrest and the warrant cannot be executed, the Police Officer entrusted with the execution of the warrant should be produced before the Magistrate to give evidence to the effect that the warrant could not be executed. The Magistrate should then be requested to issue proclamation under Section 82 CrPC and attachment of property order under Section 83 CrPC. Proceedings under Sections 82 and 83 CrPC should be completed expeditiously.

63. Section 82 CrPC lays down that if the Court is satisfied that such circumstances exist, the Court will give a time period of 30 days from the date of proclamation within which the person has to appear before the Court. The issuance of warrant is prerequisite for an order of proclamation.

64. Without having the authority to issue a warrant, a Court cannot issue any order of proclamation. These seemingly harsh measures are important as financial sanctions compel the person to come to the Court.

65. Before an order of proclamation is issued, the Court must ensure that it has the reasons for issuing such an order. An order of proclamation without sufficient cause would be illegal and therefore, any consequent action arising out of that order like attachment would be deemed illegal as well. Therefore, much turns on the fact that whether the Court is satisfied that the person has absconded or is concealing himself is justified or not.

66. The amendment to the CrPC in 2005 also brought in a few changes with regard to the order of proclamation. A new subsection (4) was added to Section 82 which mandated that when a person accused of an offence punishable by certain Sections, including Section 302, fails to appear within the specified time and place as given by the order of proclamation, he would be declared a proclaimed offender.

67. Section 174A was included in the IPC by 2005 amendment which stipulated a punishment of a maximum of three years with or without fine in case of proclamation issued under Section 82(1) CrPC and a maximum of seven years with fine in case of Proclaimed offender.

68. Sections 83 to 86 CrPC deal with attachment and the effects arising thereof. Section 83 CrPC empowers the Court to attach the property of any person concerned against whom a proclamation has been issued. Therefore, an order of attachment can only be made after an order of proclamation has been issued for justifiable reasons. This is in direct contrast to the Old Code where the attachment order could be issued at any time, even simultaneously with the order of proclamation.

69. Even in the present CrPC, the attachment order can be made simultaneously with a proclamation order on two exceptional occasions: one, when the property is about to be disposed of and two, the property is about to be removed from the local jurisdiction of the Court. The Court can attach both moveable and immoveable

property but a curious wrangle arises when it comes to attaching joint family property.

70. Section 84 CrPC relates to claims and objections regarding attachments. If a person, other than the proclaimed person, has an interest in the property to be attached, he may object to that attachment within six months. Section 85 talks about release of the attached property on appearance of the proclaimed person within the specified time. Section 86 CrPC lays down the rule regarding appeal from order rejecting application for restoration of attached property.

Suggestions of Mr. N. Hariharan, Senior Advocate as Amicus Curiae

71. The system of common law countries like USA, Canada, and Australia provides for service by Private Process Server to serve the papers on the opposite side. The reason one may decide to use Private Process Server is that it is more efficient, effective and minimises the hassle one has to undergo if the opposite side is avoiding service.

72. In India, where the Courts and Administrative Staff are already overburdened, it might be difficult for the Process Servers to devote the time or exercise due diligence necessary to track and serve opposite party which is trying to avoid service. The Private Process Service would not only reduce the burden on the present Process Servers but also ensure, that persons, who remain un-served for no fault of theirs, e.g. change of address or for some other reason (unintentional) are not declared proclaimed offenders.

73. The Process Server may be directed to file an affidavit disclosing the date, time and mode of service, the attempts made to serve and identify the accused. The affidavit should specifically reflect that due diligence was exercised in serving the process and service was not effected in a mechanical manner.

74. The filing of the affidavit would instil a sense of accountability in the process server and make them acknowledge the fact that in case they failed to exercise due diligence, they would be held responsible. It will act as a safety check to avoid the possibility of tempering with the process of service or influencing process server.

75. The affidavit of the process server should include the date, time and mode of service. If the accused could not be served, the attempts be made to identify and serve the accused.

76. Search on the popular social networking sites where people often list their name, location and other information would be very useful in tracing the accused.

77. The particulars of the friends and relatives of the accused be furnished to the process server to enable him to trace out the accused.

78. Linking police promotions to the number of proclaimed offenders they nab either exclusively or as an additional criterion to the already existing scheme. This would help to motivate the police officials. As an additional incentive, on nabbing a predetermined number of proclaimed offenders, a police officer should be

rewarded. This scheme was launched in nine districts within the jurisdiction of IG, Jalandhar (Punjab) range.

79. A central data base of the proclaimed offenders be prepared similar to the Crime and Criminal Tracking Network & System (CCTNS) for sharing information between the state police with respect to the proclaimed offenders. The data base shall include the details of *Proclaimed offenders*/absconders involved in cases registered in branch and the details of *Proclaimed offenders*/absconders wanted in cases of other law enforcement agencies who are residents of places within the jurisdiction of the branches and likely to visit their home districts.

80. If accused is suspected to be abroad, a red corner notice may be issued from INTERPOL against him or if the accused is suspected to flee from the country, lookout notices/circulars may also be issued.

81. The Ministry of External Affairs shall not issue passport facilities to the absconding accused. The passport of such accused should be revoked under Sections 6 and 10 of the Passport Act, 1967.

82. Periodical enquiries should be made about all the proclaimed offenders and the result of such enquiries and efforts should be mentioned in the Dossier Module or register kept in the branches.

83. A special cell dedicated tracking and apprehending proclaimed offenders has become necessary.

Submissions of Mr. Rajiv K. Garg, Advocate

84. Section 61 CrPC provides the manner in which summons are issued and Section 62 CrPC provides the manner in which the summon issued should be served. It provides that every summons shall be served by a police officer personally upon the person/accused by handing/delivering or tendering him one of the duplicates of the summons and getting him to sign a receipt therefore on the back of the other duplicate.

85. The Investigating Officer who has filed the charge-sheet against the accused has complete authority to serve the summons upon the accused and the same can stall the whole criminal judicial system by not serving the accused on the first instance and the Criminal Courts take very casual view and grant various opportunities and later as a matter of regular process fail to look at the report of the service and the reasons thereof which is an important aspect of the criminal justice system.

86. It is relevant to point out that Section 65 CrPC provides for the procedure when service cannot be effected. However, the Criminal Courts do not take recourse to Section 65 CrPC which provides that in case service cannot be effected under Sections 62, 63 or 64 CrPC, the serving officer shall affix the summons on some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and the Court, after making such inquiries, may declare that the summons has been duly served or order fresh service in such manner as it considers proper by way of publication.

87. In the usual course, the summons is never served despite that Courts issue bailable warrants and direct the concerned officer to execute the same and upon the failure to the same issue non-bailable warrants.

88. Multiple precautions could be taken whereby neither the accused nor the prosecution could abuse the process looking the grave consequences on either side i.e. prosecution as well to the accused such as: service of summon shall be done by any inspector and not just the I.O; the person affecting the service of summon shall file an affidavit stating that the reason of non-service, the report should be attested/endorsed by two the witnesses who shall confirm the content of the said report; the serving officer shall also serve a copy of the summons upon the RWA where such person is residing; the IO shall file an affidavit in support of the said report; to ensure the above, the Court may issue another process; before issue of warrants, the Court must be satisfied upon the report of the IO supported/endorsed by the two witness and the RWA; The warrant issued be marked to a police officer for execution and he shall ensure the execution thereof; only upon the report of the executing officer that the accused upon whom the summons/warrant is to be executed is evading service, having knowledge thereof and he has complied with the entire procedure of service of summons and the court is satisfied, only thereafter the court may issue the NBW; only upon the service of the bailable warrant/NBW and upon failure of the accused to appear before the court, or such person is absconding or is concealing so that the warrant cannot be executed, the court may

issue proclamation; the proclamation may be published in the local newspapers; the court before issuing a proclamation may be issued notice to the RWA; the proclamation shall be affixed at some conspicuous part of the house/office in which such person ordinarily resides or to some conspicuous place of such town/village/area; direct the SHO concerned of the area to personally serve such person and upon failure to effect service on such person, file an affidavit supported by two witnesses preferably neighbours; try to have telecast the factum of the NBW and proceedings under Section 82/83 CrPC; and thereafter only being satisfied after recording of the statement of the IO/SHO concerned issue the process of PO, however, no PO be declared unless there is service of once of summons/BW/NBW;

Suggestions of Ms. Sonia Mathur, Advocate for C.B.I

89. The copy of the proclamation order may be pasted on the notice board of the offices of Self-Government bodies of the area where the person resides.

90. The copy of the order shall be affixed on some conspicuous part of the house or homestead in which such person ordinarily resides.

91. In case accused is not available despite making best efforts, the officer prepares a detailed report explaining efforts made by him including the number of visits, the persons contacted and the result of his enquiries.

92. The officer records statements of persons from whom enquires were made and such statements should make part of the case diary as well as part of the report to be submitted to the court.

93. The Court may consider the report of the officer and if required, record the statement of the officer for its satisfaction that despite sincere efforts, accused could not be arrested.

94. For its further satisfaction, the Court may order publication of proclamation in more than one daily newspapers circulated in the area of ordinary residence of the accused, his permanent residence and his working place. Visual media and modern technology can also be ordered to be used to enlarge the scope of such publication.

95. Prize money may be declared for information/apprehension of the accused.

96. The Court may order any other process or method to ensure compliance of the provisions depending upon the nature of the case and background of the accused.

97. Since non-appearance of accused in response to the proclamation under Section 82 CrPC has been made a substantive offence, the provisions of Section 174A IPC are required to be invoked against absconding accused. When the accused fails to appear before the court in response to the proclamation issued under Section 82(1) CrPC, within the period of 30 days from the date of proclamation, or fails to appear at the specified place and time required by the proclamation issued under Section 82(4) CrPC, he is punishable with imprisonment for a term which may extend to three

years or with fine or with both and imprisonment for a term which may extend to seven years or with fine or both, respectively.

Submissions of Mr. Surinder.S.Rathi, OSD-cum-Registrar of Delhi High Court

When a person declared as an absconder or proclaimed offender (PO)

98. The word `absconder' is not defined in the Code of Criminal procedure. It occurs in other provisions of criminal law e.g. Sections 87 and 90(a) CrPC and Section 172 IPC. From the context and object of these provisions an absconder may be said to be one who intentionally makes himself inaccessible to the processes of law. Hence, it is not enough if it is shown that it was not possible to trace him soon after the occurrence.

99. It has to be established that he was available at or about the time of the commission of the alleged offence and ceased to be available after the commission of the offence, before he can be treated as an absconder. Similarly, it has to be established that there is no immediate prospect of arresting the accused. Then the question arises, whether it is enough if the material on record shows that these conditions have been fulfilled or whether it is necessary that the recording Court should explicitly state that it has so satisfied itself before the deposition is actually recorded such jurisdictional facts must be existing on this date of passing of the order.

100. When a person is hiding from his place of residence so as to frustrate the execution of a warrant of arrest, he is said to have absconded. A person may hide within his residence or outside away

from his residence. If a person comes to know about the issuance of a process against him or if he anticipates such a process and hides or quits the country, he is said to have absconded. It is settled legal proposition that when in order to evade the process of law a person is hiding from (or even in) his place of residence, he is said to abscond. A person is not said to abscond merely when he has gone to a distant place before the issuance of a warrant. Similarly, it is necessary that the person is hiding himself and it is not sufficient that the Police is unable to find him.

101. Normally, if a person fails to appear before the Court even after being served a summons, the Court issues a warrant of arrest. However, if the person absconds to avoid the arrest, the drastic step of proclamation for persons absconding needs to be taken, which is described in Section 82 CrPC.

102. If the Court has reason to believe that a person has absconded to avoid the execution of his arrest warrant, the Court may publish a written proclamation requiring such person to appear before it at the specified place and time. The date and time of appearance must not be less than thirty days from the date of proclamation.

103. Section 82(2) CrPC, the proclamation must be read in some conspicuous place of the town or village in which the person resides. It should also be affixed to some conspicuous part of the house in which the person resides or to some conspicuous place of the town or village. A copy of the same must also be affixed to some conspicuous part of the Court house. The Court may also direct a copy of the proclamation to be published in a daily newspaper

circulating in the place is which such person ordinarily resides. The terms of Section 82 CrPC are mandatory and a proclamation cannot be issued without first issuing a warrant of arrest.

104. There are three stages when a person can be declared as a proclaimed offender namely during investigation; during trial and post-conviction.

During Trial

105. The scenario of abscondance during trial stands on a different footing, at least as compared to abscondance during investigation. In this category, the accused has crossed the stage of joining of investigation and he has been summoned by a Court as an accused to face trial after recording a finding of existence of sufficient material against him. By this time, cognizance of the offence is also taken by the Magistrate/Sessions Courts under Section 190 and 193 CrPC.

106. There can be two sub-categories. *First category* can be of those who have not entered appearance in the trial even once. The *second category* would contain those accused who stop appearing during the course of trial after initially entering appearance and furnishing the bail bond. In the first category, the Court has to ensure that the address at which the accused is sought to be served is the true and complete address of the accused. Many a times, either deliberately or out of ignorance, the prosecuting agency, complainant end up furnishing and incorrect and incomplete address of the accused. Consequently, the Court is constrained to issue processes at such address resulting in non-service and many a times,

it leads up to issuance of proclamation against the accused as his last known address.

107. In the Second category, once the accused has entered appearance and furnished bond not only his complete and correct address is available with the Court but by entering appearance in the trial accused comes to know of the pendency of the proceedings against him. His absence or abscondance, post his entering appearance in the trial, is a circumstance which can be relied heavily against the accused.

108. If the Trial has crossed stage of framing of charges then a finding of existence of *prima facie* case is also available on record. Now there is a duly executed and sworn Bail bond coupled with a Surety bond to ensure regular appearance of the accused.

109. A new offence in the form of Section 229A IPC has been introduced in the Penal Code w.e.f. 23rd June, 2006 according to which failure by a person released on bail or bond has been made a penal offence.

110. This newly added offence is an addendum to Section 174A IPC. Rather when looked upon together the newly amended Penal Code provides that an offence stand committed not only for his non-appearance on publication of a proclamation but also for non-compliance of a Bail Bond furnished in a matter.

Suggestions to be followed at the time of Arrest/Surrender in Court

111. The IO or the SHO shall ensure that they shall personally or through one of their Subordinate official visits the address disclosed by the accused so as to check its correctness before or after his arrest

or while seeking his arrest warrants from the Courts. (*Agreed by CBI*)

112. The IO/SHO shall record in the case diary the name of at least two respectable persons of the locality of accused with their contact details who will ratify that the address of the accused mentioned in the arrest memo or the applications for seeking warrants of arrest of the accused is a correct and complete one and it does actually belong to the accused.

113. The IO/SHO must ascertain the additional addresses of the accused viz. the permanent or the native place address and if addresses are located in other States, the same shall be verified through a subordinate or by any other means through the local police of the address disclosed. (*Agreed by CBI*)

114. The IO/SHO shall obtain documentary proof of the address disclosed by the accused and append the same with the Chargesheet.

115. In case an accused is a tenant in the property, a copy of the rent deed/rent receipt or a plain paper declaration by the landlord would be a sufficient compliance of this requirement.

116. The IO/SHO shall take photographs of the dwelling unit of the accused which is shown/claimed to be address of the accused.

117. The IO/SHO shall prepare a site plan of the residential address of the accused so that it can be used as an aid while serving the accused with any process issued by the Court or execution of NBWs or u/s 82/83 CrPC processes. That in case the IO/SHO has an internet facility at Police Station, he shall take the help of printouts

of internet maps like Google Maps so as to show the specific location of the house.

118. The IO/SHO shall mandatorily ascertain the work profile/job profile of the accused and shall obtain his complete address and details of his place of work/employer with other contact details.

119. The IO/SHO shall obtain a documentary proof of the place of work and shall record it in the charge sheet as an address where due service can be effected. Photograph of such work place and a sitemap shall also be obtained.

120. In case the accused is found to be working in a Government/Private employment, the Head Office address of his employer shall be obtained apart from requiring such Employer to share with the Police/Court in case there is a change of place of employment or termination or removal of accused from employment.

121. At the time of arrest, the accused shall share names of at least three blood relatives with their details like address and contact numbers and the nature of relation preferably with documentary proof who can be specifically contacted in case of issuance of any coercive process against him. This would act as a safeguard to the accused as in many instances accused ends up being declared a Proclaimed offender despite not having any knowledge. *(Agreed by CBI)*

122. The arrests shall be made as per the amended updated arrest memo as specified in the Principal Research Paper at Page Nos. 44 to 45. *(Agreed by CBI)*

123. At the time of arrest or soon thereafter, it shall be mandatory for the accused to submit at least two of the following documents as per Criminal Manual 1980 of Bombay High Court, notification No.P.0805/2010 dated 29th July, 2010:-

- (i) Passport
- (ii) Pan Card Copy
- (iii) Bank Passbook
- (iv) Credit card with photograph
- (v) Ration card
- (vi) Electricity bill
- (vii) Landline telephone bill
- (viii) Voter I.D. Card issued by the Election Commission of India
- (ix) Property Tax Register

(Agreed by CBI & DP)

124. In case of grant of bail, it shall be mandatorily for every accused and every surety as a condition for grant of bail that both the accused and the sureties must necessarily inform the police authorities as well as the Court granting the bail about the change of their residential address while the accused is on bail. The change of residential address should be immediately intimated either by the accused or by the sureties as the case may be or by both with due documentary proof. *(Agreed by CBI & DP)*

125. The concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police. *(Agreed by CBI & DP)*

126. The concerned area Magistrate/Court hearing the Bail application shall ensure that the accused shares all the above particulars in addition to the particulars provided in the principal research paper and various judgments of Delhi High Court and Supreme Court before the benefit of bail is granted to the accused.

(Agreed by CBI & DP)

127. In all Sessions Triable cases, it shall be made mandatory that the accused surrenders his passport, with the IO/SHO. However, as regards cases instituted on private complaints namely Section 138 N.I. Act etc., the situation tends to get a bit complicated in so far as a private complaint is not expected to have the way with all to verify the correctness of the address of the accused or furnish documentary proof thereof. *(DP agreed)*

Guidelines in such cases can be

128. In case of cases tried on private complaint, the complainant shall share all the addresses known to him i.e. current/temporary/permanent and workplace. *(Agreed by CBI & DP)*

129. In case of cases tried on private complaint, the complainant shall file documentary proof of the address of the accused, if available. *(Agreed by CBI & DP)*

130. Mandating the complainant to state on oath in his affidavit that address mentioned by him in the complaint is true and complete to the best of his knowledge. *(Agreed by CBI & DP)*

131. The complainant shall also disclose additional addresses of the relatives of the accused even though service at those addresses may

or may not be treated as due service upon the accused. (*Agreed by CBI & DP*)

132. – Post entering of appearance by the accused, it shall be mandatory to him to disclose additional addresses other than those mentioned in complaint to the Court with address proof. (*Agreed by CBI & DP*)

133. In complaint cases, accused shall furnish name, address, relation and other details of three of his relatives for future communications. However, service of summons to those addresses may not be treated as due service under Section 64 CrPC. (*Agreed by CBI & DP*)

134. Since in a private complaint no arrest memo is prepared, whether or not the Court is satisfied or bond is furnished at the time of bail, it be mandated that the address of the accused and surety be verified from the local police along with compliance of suggestions already given in the Principal Research Paper including obtaining permanent and workplace address and in case of tenanted premises, tenancy document. (*Agreed by CBI*)

135. Mandating Courts and Police to take on record photograph of the accused and surety along with surety bond. (*Agreed by CBI & DP*)

136. Courts to ensure that the surety furnished by the accused is either in blood relation or of a person who has effective control over the accused. (*Agreed by CBI & DP*)

137. In case the surety claimed to be employed at some place, verification of his address be done but verification of his employment be also carried out. (*Agreed by CBI*)

138. Absence of mechanism of service by additional modes like registered post, e-mail, courier, SMS and like leaves scope for false service reports by human agency. [NCT of Delhi information Technology (Electronic Service Delivery) Rules, 2012]. (*Agreed by CBI & DP*)

139. Furnishing of false reports by process servers/police officials, absence of mechanism where process service/police official can be mandated to pay up three visits at the address of the accused as in Civil cases, no mandate to process server/Police official to submit affidavit of proper service in criminal matters when accused is in the same district and no directive to Process Server/Police official to photographed/video- graphed of the actual delivery of summons or affixation. (*Agreed by CBI & DP*)

140. Arrest/ Court Surrender Form notified by the Lieutenant Governor of Delhi on 05th January, 2001 be mandatorily filled by the accused even in complaint case, which is not happening as of now. This would go a long way in containing the instances of people getting declared *Proclaimed offender* wrongly or persons escaping the clutches of law in so far as this Arrest/Court Surrender Form contains many important disclosures which can be used to trace/track the accused. However, this Form needs further amendment by way of inclusion of UID Aadhar number, Bank Account number, Driving Licence number, PAN number and other

additional details which can be crossed checked from different Data Banks. *(Agreed by CBI & DP)*

141. In case any criminal complaint or in a case filed by Police, before the summon shall be served on the accused in a foreign country, the Court must satisfy whether India has a Mutual Legal Assistance Treaty (MLAT) or any other similar Treaty. Upon ascertainment of these facts, summons should be served only under the formats/guidelines provided therein. *(DP agreed)*

142. There is an urgent need to update the Arrest Memo Forms being used by Investigating Agencies. The forms being used now a days does not carry any specific particulars which can be got verified in a foolproof manner, without wastage of any time.

143. One way of doing the same is by mentioning the duly verified Aadhaar Number and if possible by appending the Aadhaar I.D. print out of the arrestee. Such Arrest Memo shall also have a declaration by the SHO of the area that the fact that the factum of his/her arrest has been uploaded/updated in the modified UIDAI data management system. For arrestee who does not have an Aadhar Card or registration, it can be got prepared or done even post his arrest, in no time.

Suggestions qua issuance of Warrants of Arrest at Investigation Stage

144. Investigating Officer may apply to a Magistrate for issuance of warrant of arrest where the offence is cognizable and non-bailable and proposed warrantee is evading his arrest. *(Agreed by CBI)*

145. While applying for warrant, the Investigating Officer must show the Magistrate his efforts made for arresting the proposed warrantee. *(Agreed by CBI & DP)*

146. Investigating Officer must show that the proposed warrantee is ordinarily residing at or was very recently residing at some address which is in the knowledge of the IO through any manner and that now the proposed warrantee is not available at that address due to his deliberate intention to avoid custody in the case in question. *(Agreed by CBI & DP)*

147. No warrant shall be issued against a proposed warrantee merely on the ground that he is not available for the IO/ Police officials for the purpose of joining him in the investigation. *(Agreed by CBI & DP)*

148. Investigating Officer must satisfy the criteria that in his belief and on the basis of material collected by him/previous IO during the investigation, he is of the opinion that the proposed warrantee is involved in the case as an accused. *(Agreed by CBI & DP)*

149. Only a strong suspicion or information of secret informer cannot be treated as a ground for issuance of warrant of arrest.

150. Only on the basis of disclosure statement made by some accused before the police officer naming the proposed warrantee, prayer for issuance of warrant shall not be entertained.

151. No warrant shall be issued against proposed warrantee unless the Police Officer has categorically stated in writing that there exists grounds of arrest and such grounds are not only legally admissible

but are also sufficient to sustain filing of a chargesheet against him in the Court.

152. Investigating Officer must show that in his opinion custodial interrogation of the proposed warrantee is necessary for the just and fair investigation of the offence(s) in question. *(Agreed by CBI)*

153. The Magistrate must record his satisfaction in respect of the fact *prima facie* involvement of proposed warrantee, requirement of his custodial interrogation and that he is evading his arrest. *(Agreed by CBI)*

154. The Magistrate than can exercise his powers to issue warrant of arrest even at the stage of investigation in cognizable and non-bailable offences. *(Agreed by CBI)*

155. Such prayers shall be endorsed by the SHOs and Asstt. P.P./Addl. P.P./Chief P.P. of the Court as well with a declaration that they are satisfied that it is a fit case for issuance of NBW. *(Agreed by DP)*

Suggestions qua issuance of Proclamations at Investigation Stage

156. No Proclamation shall be issued by a Court qua a suspect unless the Police Officer has categorically stated that the offence in question was committed in his immediate presence. *(Agreed by DP)*

157. No Proclamation shall be issued by a Court qua a suspect unless the Police Officer has categorically stated in writing that there exists grounds of arrest and such grounds are not only legally admissible but are also sufficient to sustain filing of a chargesheet against him in the Court. *(Agreed by DP)*

158. No Proclamation shall be issued by a Court qua a suspect unless the Deputy Commissioner of the District (DCP) ratifies in writing that there exists grounds of legally admissible and cogent evidence warranting the issuance of Proclamation against him.

159. No Proclamation shall be issued by a Court qua a suspect merely on the ground of suspicion how so ever strong.

160. No Proclamation shall be issued by a Court qua a suspect merely on the ground of naming of the suspect in the disclosure statement of co-accused or an input received from a secret informer.

161. No Proclamation shall be issued by a Court qua a suspect unless the Court records its prima facie satisfaction to the effect that it is satisfied with the admissibility and quality of the evidence.

162. No Proclamation shall be issued by a Court qua a suspect unless the Court records its *prima facie* satisfaction to the effect that the accused has been duly served with a notice/warrant or is satisfied that the suspect has absconded or is concealing himself so that such warrant cannot be executed.

163. No Proclamation shall be issued by a Court qua a suspect merely on the ground that the IO/ Police official has failed to apprehend/arrest or ascertain the whereabouts of the suspect.
(Agreed by CBI)

164. No Proclamation shall be issued by a Court qua a suspect merely on the ground that he is not available at his known places of abode or is not found his last known address. (Agreed by CBI)

165. No Proclamation shall be issued by a Court qua a suspect merely on the ground that he is not available for the IO/ Police

officials for the purpose of joining him in the investigation. (*Agreed by CBI*)

166. No Proclamation shall be issued by a Court qua a suspect unless the Asstt. P.P./Addl.P.P./Chief P.P. ratifies in writing that there are grounds of legally admissible and cogent evidence warranting the issuance of Proclamation against him.

Suggestions qua issuance of Warrants of Arrest at Trial Stage

167. At the stage of trial, accused will normally be on bail on executing personal bond with surety. The scenario of abscondance during trial stands on a different footing, at least as compared to abscondance during investigation. In this category, the accused has crossed the stage of joining of investigation and he has been summoned by a Court of Law as an accused to face trial after recording a finding of existence of sufficient material against him. And if the Trial has crossed stage of framing of charge then a finding of existence of prima facie case also available on record. Now there exists a duly executed and sworn Bail bond coupled with a Surety bond to ensure regular appearance of the accused. (*Agreed by CBI & DP*)

168. Therefore, at this stage, non-appearance of accused without any justified reasons should be taken as sufficient justification for issuance of warrants of arrest including NBW as the case may be. (*Agreed by CBI & DP*)

169. If any authorized person moves an application to show the reasons for non-appearance of the accused, the Court should decide the application. If the Court is not satisfied with the reasons

proposed, it may indicate the non-appearance without justification.
(Agreed by CBI & DP)

Suggestions qua issuance of Proclamations at Trial Stage

170. Needless to say that for issuance of proclamation, existence of warrants of arrest is necessary. Code of Criminal Procedure nowhere differentiates between issuance of proclamation at the stage of investigation or at the stage of trial. Therefore, the procedural guidelines suggested above for issuance of proclamation at the stage of investigation should apply to the stage of trial in the corresponding manner.

Suggestions qua issuance of Post-Conviction

171. The scenario of abscondance post trial stands on a totally different footing, as compared to abscondance during investigation or trial. In this category, the accused has not only crossed the stage of joining of investigation but he has also faced a full-fledged trial by a Court of Law and a finding of conviction against him stands recorded in the form of judgment of conviction. Hence as compared to the stages of "*During Investigation*" and "*During Trial*", an act of abscondance at this stage shall be treated as the most serious one. An act of abscondance at this juncture, tantamount to clear wilful abscondance and such an accused shall be dealt with strictly according to Section 174A IPC. (Agreed by CBI & DP)

Suggestions qua General Requirements and Pre-conditions for issuance of Proclamations

172. There must be a report before the Magistrate that the person against whom the warrant was issued by him had absconded or had

been concealing himself so that such warrant cannot be issued. An attachment warrant can be issued only after the issuance of proclamation.

173. The expression '*reason to believe*' occurring in Section 82 CrPC suggests that the Court must be subjectively satisfied that the person has absconded or has concealed himself on the materials before him.

174. The term 'abscond' is not to be understood as implying necessarily that a person leaves the place in which he is. It is etymological and its ordinary sense is to hide oneself. Further under Section 82 CrPC, the Court issuing proclamation must record its satisfaction that accused had 'absconded' or 'concealed himself'.

175. The three clauses (a), (b) and (c) of Section 82(2)(i) CrPC are conjunctive and not disjunctive. The issue of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-section (2) is optional; it is not an alternative to clause (i). The latter clause is mandatory.

176. The Magistrate must be satisfied that the accused was absconding or concealing himself for the purpose of avoiding the service of the warrant. The mere fact that the police could not find the accused is not enough under this Section. What is required is the evidence of the effect that he had known that he was wanted and was avoiding arrest.

177. Under Section 82 of the Code, the Magistrate issuing proclamation must record his satisfaction that the accused had absconded or concealed himself. A person who had gone abroad

before the issue of the warrant of arrest cannot be said to be absconding or concealing. However, even though the accused has left India before proclamation, if he continues to remain outside India with a view to defeat or delay the execution of the warrant, he has to be taken to be absconding person.

178. The proclamation of absconding shall not be issued whenever a warrant fails of its effect. Before issuing a proclamation, the officer who tried to execute the warrants must be examined as to the measures adopted by him to serve it.

179. If on his evidence or in any other manner, the Magistrate is satisfied that the accused is absconding or concealing, then and then only the processes of proclamation may be issued.

180. Process under Section 82 of the Code cannot be issued unless it is established that a warrant had already been issued against the person wanted and that person was absconding. The previous issue of a warrant against the person whose attendance is required before the Court is a necessary condition.

181. Simultaneous issue of both the processes, namely, warrant of arrest and proclamation is *ex-facie* contradictory, since it is only after the first that the second can be issued where the concerned person has absconded or is hiding.

182. A proclamation under Section 82 CrPC must mention the time within which and the place at which the absconder should present himself to save the sale of his property. An omission to mention the time and place would render the proclamation a nullity. The

proclamation shall also be ineffective if a period lesser than that provided by the Section is mentioned.

183. The failure to comply with all the three modes of publication is to be considered invalid publication according to law as the three sub-clauses (a) to (c) are conjunctive and not disjunctive.

184. The most important part of the publication is the publishing of the proclamation in the accused's place of residence, and it is from the date of such publication that the 30 days should be counted.

185. An accused person against whom a proclamation has been issued must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf.

Suggestions for enhancing the efficiency in execution of proclamations

186. Making UID/Aadhaar Card as the basis of all interrogations, arrests and proclamations.

187. When we are pondering over improving the efficiency of execution of proclamation proceedings, the focus of attention shall not remain limited to the proceedings issued under Section 82, 83 CrPC but it shall travel beyond the same. The need of issuance of proclamation arises at difference stages of criminal justice system i.e. during investigation, trial and post-trial.

188. In this regard, the identity particulars of an individual are the most important inputs at the hands of Investigating Officer or Court. Be it an interrogation or arrest, if the technological tools available today are availed then the instances of a person absconding from the judicial system can be minimised to a great extent. It is in this

reference that the project undertaken by the Planning Commission qua issuance of a unique identification of all the citizen of the country would come handy and can assist the criminal justice system in many wonderful ways.

189. As per information available on the website maintained by Unique Identification Authority of India, Planning Commission, Government of India. Aadhaar is a 12-digit individual identification number issued by the Unique Identification Authority of India on behalf of the Government of India. This number will serve as a proof of identity and address, anywhere in India. Any individual, irrespective of age and gender, who is a resident in India and satisfies the verification process laid down by the UIDAI can enrol for Aadhaar. Each individual needs to enrol only once which is free of cost. Each Aadhaar number will be unique to an individual and will remain valid for life. Aadhaar number will help you provide access to services like banking, mobile phone connections and other Govt and Non-Govt services in due course.

190. Aadhaar is easily verifiable in an online, cost-effective way; unique and robust enough to eliminate the large number of duplicate and fake identities in government and private databases; and random number generated, devoid of any classification based on caste, creed, religion and geography.

191. The Unique features of Aadhaar Card registration are a 12 digit unique identity for every Indian individual, including children and infants; enables identification for every resident India; establishes Uniqueness of every individual on the basis of

demographic and biometric information; it is a voluntary service that every resident can avail irrespective of present documentation; each individual will be given a single unique Aadhaar ID number; Aadhaar will provide a universal identity infrastructure which can be used by any identity-based application (like ration card, passport, etc.) and UIDAI will give Yes/No answers to any identity authentication queries.

192. The above features of Aadhaar Card are so dynamic in nature that they are absolutely foolproof and leaves no scope for a person to impersonate to escape the clutches of law. It is need of the hour that not only the federal investigators of criminal cases like National Investigation Agency (NIA) and Central Bureau of Investigation(CBI) but also state police like Delhi Police should be allowed to have an unhindered access to the UIDAI data so as to correctly identify the suspect or an accused right from the stage of investigation.

193. The UIDAI data base shall be so enabled so that the criminal antecedent or any kind of interface of a person shall be recorded in his/her UIDAI data by way of some kind of hyperlink etc.

Modification of arrest memos in terms of UID/Aadhar particulars

194. On the same lines there is an urgent need to update the Arrest Memo Forms being used by Investigating Agencies. The forms being used now a days does not carry any specific particulars which can be got verified in a foolproof manner, without wastage of any time.

195. One way of doing the same is by mentioning the duly verified Aadhaar Number and if possible by appending the Aadhaar I.D. print out of the arrestee. Such Arrest Memo shall also have a declaration by the SHO of the area that the fact that the factum of his/her arrest has been uploaded/updated in the modified UIDAI data management system. For arrestee who does not have an Aadhar Card or registration, it can be got prepared or done even post his arrest, in no time.

Mandatory affixation of photograph of the arrestee on the Arrest Memo

196. The modified Arrest Memo should have a mandatory column for affixation of front and side pose photograph of the arrestee. This can be easily achieved with the help of a web-based camera which can be attached with any Desktop/Laptop computer. Inclusion of photograph would not only bring credibility in Arrest Memo but would also come handy in the future proclamation proceedings, if any. Also, once included in the Data Bank of National Crime Record Bureau (NCRB), the photo can be used to identify the repeat offender with the help of latest software tools which use face recognition techniques like super imposition etc.

Inclusion of all mobiles and landline connections of the arrestee in the Arrest Memo

197. The Arrest Memo shall carry all mobile and landline numbers of the arrestee apart from such contact numbers of his/her parents, spouse or any other first-degree relation for future reference purposes. Availability of mobile phone number of the suspect,

arrested accused would come handy in establishing communication with him/her by the Investigating Agencies or the Courts. Also under 'Know Your Customer' (KYC), all telecom companies are obliged to keep updated photos and other IDs of all their customers.

198. Almost all residents of Delhi have at least one mobile phone connection in their name and almost half of the mobile phones carried by the population of Delhi are smart phones. Once a person shares his mobile number with the investigating agency or the court during investigation or trial, apart from serving him the conventional mode of communication like summons, registered post etc. he can be served through new I.T. technology tool like Email, Facebook, Twitter, etc. For example, experience shows that in very many summons, processes issued by the Court a report is received that the accused did not meet or was not available or the house was found locked. In case, the mobile number of the accused is available with the police or the court not only the service of a notice/summon can be made through SMS service but even if some *dasti* service is to be effected, the accused can be forewarned to remain present at his house at a particular time, on scheduled date for service of processes.

(Agreed by CBI & DP)

Inclusion of all other particulars of information technology communication tools like Email I.Ds, Facebook accounts, LinkedIn account and Twitter handles etc. of the arrestee in the arrest memo

199. Another improvement which can be brought into the modified arrest memo is inclusion of particulars of other new age modes of communications namely Email I.Ds., Facebook accounts, LinkedIn

accounts, Twitter handles, etc. These modern days social media tools can be used for tracking and tracing an accused in case of any exigency akin to abscondance. Such information technology modes of communication can be legally accepted as per 'e-service' provided in Delhi Electronic Service Delivery Rules. (Agreed by CBI & DP)

Inclusion of all the Bank Account particulars and Credit/Debit Cards particulars of the arrestee in the arrest memo with real time web linkage to Aadhar Card

200. Another vital suggestion is to include all the Bank Accounts particulars and Credit/Debit Cards particulars of the arrestee in the arrest memo with real time web linkage to Aadhar Card data. This would go a long way in tracking an arrestee accused if he absconds. Any usage or operation of Bank account or the Credit Card, when put under surveillance, would get registered and alarm the security agencies.

Creation of a dedicated website containing particulars of all the person arrested or bailed in criminal offences

201. Our country is a world leader in software and hardware development. We can use the information technological tools by creating a database of all arrested criminals and also all those who are facing Criminal Prosecutions. This would not only be handy and easily accessible to all concerned specially Security Agencies but will also act as a deterrence to the potential absconders.

202. Such a data base can even be made accessible to the public so that the same can be used to verify the criminal antecedents or credentials of a person through a simple search process by private parties. Such a data bank can also help identify repeat offenders and

serial offenders and can be an effective tool in efficient handling of crime. *(Agreed by DP)*

Creation of a dedicated website for all persons against whom proclamation issued or who are declared Proclaimed offenders (PO)

203. Likewise we can also use the IT tools by creating a database and a dedicated Website of all absconders and *Proclaimed offenders*. This would go a long way in bringing in discipline in Criminal Trials. Access to this tool would help in speedy trial of justice and help tracking the absconders. As of now there is no sure short mechanism whereby list of absconders or P.O. of a particular state can be easily accessed by police force from other States and Nations. Having a state-wise data bank apart from a national data bank of such absconders/P.O. would help all stake holders in tracking such persons and bringing them to justice. Even otherwise, abscondance is a public information and as per law, an absconder/P.O. can be arrested even by non-police general citizen. *(Partly agreed by CBI)*

Mandatory registration of all property owners/landlords who let their residential/ commercial or industrial property on rent

204. Delhi being the national capital attracts thousands and lakhs of inbound settlers. Crimes committed by this floating population are alarmingly high. Also, the heightened national security scenario demands repeated notification of compulsory Tenant verification drives by Delhi Police. Another suggestion this Paper would like to put forth is compulsory Registration of all the Landlords and Tenants in the territory of Delhi with specific reference to Aadhaar Number.

205. This can be done in a simple online format and also through offline procedure. Some simple practice directions can be issued in this regard. This would, upon its linkage to Aadhaar data bank, rule out frequent incidents of abscondance during criminal trials.

Execution of Section 82/83 CrPC processes to be done by an officer not below the rank of S.I., since it is now a cognizable offence, under 174A IPC

206. Since abscondance and declaration as Proclaimed offender has now become a cognizable and non-bailable offence it is imperative that the execution of Proclamations shall be accorded top priority and its credibility restored. This can be done only if the process of execution of Section 82-83 CrPC is handled by a responsible senior officer of the Police Station or by a team of dedicated officers specially assigned the job in each police district.

207. It is also pertinent to mention here that as per Section 82(3) CrPC a finding by the concerned Court shall be regarded as the conclusive evidence and proof of all compliance of all pre requisites of this Section. Meaning thereby there would practically no viable defence available to the accused once his proclamation is published by the Police and a satisfaction is accorded to it by the Court. As such execution reports of Sections 82 or 83 CrPC submitted by a Constable or a Head Constable cannot inspire requisite confidence as compared to a report of S.I. or above.

Mandatory photography and video recording of 82/83 CrPC proceedings and attachment of the video file with the prosecution material-

208. Another tool which can add credence to the publication proceedings is photography as well as videography of the

publication proceeding. This would rule out instances where it is found that the execution police official has prepared the publication report without actually visiting the house of the accused. A series of photos and a video of the house of the accused during publication of the proclamation, will rule out the instances where accusation are made that no visit was paid by the execution officer at the address of the accused. *(Agreed by CBI & DP)*

Mandating RWAs to keep track of floating population in their localities

209. In order to bring orderliness in Criminal Justice System one measure that can be adopted is to involve the civil society in tracking the floating population of their locality. Schemes like Bhagidari can be utilized for this propose. Residential Welfare Associations/Market Associations are being allocated funds by the Govt. of NCT of Delhi under various Schemes. They have sufficient ways and means and as such can be requested to keep track of floating population in their catchment colony and update the local P.S. about it. They can be requested to keep a list of landlords who let their residential, commercial or industrial properties on rent apart from details of their tenants. *(Agreed by CBI & DP)*

Mandating the collection of residential as well as work place details of all the accused

210. The antecedent verification of accused as done under Form-12 under Punjab Police Rules, shall include not only permanent residential address verification but also past work place address verification. Many a times, ex -employers have a clue about the

employees past as well as their current whereabouts. (*Agreed by CBI & DP*)

Suggestions for early apprehension of Proclaimed offenders/Proclaimed Persons

211. This is high time that names, addresses and pictures if any of *Proclaimed offenders* are made public on different governmental website i.e. NCRB, CBI, Delhi Police and other State Police. (*CBI & DP agreed*)

212. There is an urgent need to create a dedicated website which contains data of all the *Proclaimed offenders* and Proclaimed Persons/ Absconders of each State / Union Territory in a consolidated way with details of the crime, address etc. Either it can also be integrated with the aforementioned CCTNS so that the efforts to trace *proclaimed offenders* are not only in States where the accused declared PO but also in the entire Nation and even the world. (*CBI & DP agreed*)

213. Such website and another criminal investigation police websites shall carry a simple search box option where details of each *Proclaimed offenders* can be ascertained and by simply searching them with their names or other available particulars. There shall be no hesitation for the police in making names and details of the POs public so that *Proclaimed offenders* can be arrested by the citizens under Section 43 CrPC. (*CBI & DP agreed*)

214. Police be mandated to display on their website all their Standing Orders and SOPs so as to spread awareness in the general

public. (*CBI has apprehensions (its Crime Manual already on Internet) & DP agreed*)

215. Delhi Police shall put in place a Digital Surveillance System whereby it shall be given an ‘*see only*’ access to all Digital Data of the following departments so that they can cross check if any of these 18,541 *Proclaimed offenders* can be digitally tracked and brought to justice. The threat perception from these 18,541 POs roaming around in Delhi fearlessly is immensely grave. The details of the departments are as under: All Nationalized and Private Banks Saving Account Holders data; All Nationalized and Private Banks Loan Account Holders data; All Nationalized and Private Banks Credit Cards Holders Data; All PAN Card holders Data; All MTNL / Private Landline holders Data; All MTNL / Private Mobile Holders Data; All Passport Holders Data; All Govt. and Private Insurance Holders Data; All Aadhar Card holders Data; All Voter cards holders data; Transport Department, Driving Licence and Vehicle Registration Data; Registrar of Death Registration Data.

216. Once given access, there are software which can as Web Crawlers search out the POs out of large data bases. (*DP agreed*)

217. Apart from the above data base, the Digital Surveillance Team of Delhi Police and CBI shall also keep vigil on social media and website like Facebook, WhatsApp, LinkedIn and Twitter etc. for searching the accused with enhanced technological tools, now persons can be tracked even through photographs. (*DP agreed*)

218. All the Police Stations to display Names and Pictures of POs prominently so as to make public aware of such persons and also that public can help nabbing such POs. *(DP agreed)*

219. Creation of the 3D map of all the Police Stations areas in Delhi with licensed or open source Google maps type mapping with the help of National Informatics Centre (NIC) which will have a real time pop-up display of all the proclaimed offenders, convicts and other accused in a locality. The pop-up shall display the image, name, address and other details in mobile/tab/pad device or laptop or desktop for usage by Police, Intelligence agencies and Judiciary only. *(DP agreed)*

220. On the lines of PIN codes allotted by Postal Department to the entire length and breadth of our nation whereby a particular six-digit PIN Code identifies a fixed area, this methodology can be further used to award a Unique Address Code (UAC) whereby with the help of Postal Department and Municipal Corporations having the house records, pre-verified six-digit unique code for each address can be created. This code can be used by the police as well as by the Judiciary for cross checking of the address for verification purposes at the time of arrest/surrender and acceptance of bonds. *(CBI & DP agreed)*

221. In case a person does not have a passport to surrender, a letter can be sent to Passport Authority of India to not to issue a passport to the accused as and when applied without clearance of the concerned SHO. *(CBI & DP agreed)*

222. Note book of important rules, guidelines and regulations apart from judicial directions can be prepared for all criminal Courts for ready reference by Delhi Police as well as CBI. *(CBI & DP agreed)*

223. On the lines of CBI which has posted its criminal manual on their website, Delhi Police shall also pass all its standing orders for the consumption of the Courts as well as other citizens who needs to have look at them. *(CBI & DP agreed)*

224. As suggested by Delhi Police, the necessary individual information required for digital surveillance of the accused shall be obtained by each criminal court as and when applications for anticipatory bail is moved before it. Furnishing of all necessary details for digital surveillance shall be made a pre-requisite in case of anticipatory and regular bails. *(CBI & DP agreed)*

225. Mandatory usage of modified arrest and surrender form by Delhi Police in State cases and by Court in criminal cases. *(CBI & DP agreed)*

226. Interlinking of governmental / institutional databases for instant real time verification: Evidently at the time of arrest, accused furnishes his/her permanent / temporary / work place address supported by identity documents like passport, Aadhaar Card, Driving License and like. Such documents are also furnished by the surety at the time of submitting Section 441 CrPC Surety Bond before the SHO / MM / Trial Court.

227. Such exercise has already been carried out and tested in at least following projects: eDAR National Dashboard: Under the aegis of Artificial Intelligence Committee of Supreme Court, a

decision was arrived at to use AI Tool SUPACE (Supreme Court Portal for Assistance in Court Efficiency) in various legal fields like criminal appeals, income tax matters, land acquisition cases, Negotiable Instruments Act complaints, and Motor Accident Claims.

228. There is a need to interlink the governmental / institutional databases with the help of APIs (Application Programme Interface) with CCTNS of Police and CIS of judiciary for instant verification of documents furnished in the course of investigation / trial.

229. A prerequisite to usage of AI Tools in these fields was availability of structural digital database of all the cases. A Sub Committee was formed by the AI Committee of Supreme Court under Chairmanship of Hon'ble Mr. Justice DN Patel, Chief Justice, High Court of Delhi, with HMJ J.R. Midha, Judge, High Court of Delhi, HMJ Paresh Upadhyay, Judge, High Court of Gujarat, Justice Retd. K. Kannan as its Member and Sh. Surinder S. Rathi as its Convener. The *eDAR Dashboard* is developed in such a way that it seamlessly exchanges data with CCTNS of MHA, Vahan/Saarathi of MoRTH and IIBI of IRDA and would eventually be able to push eDAR to the Case Information System, CIS 3.2 of Judiciary. This networking will help instant verification of documents thereby saving thousands of man hours currently being utilised in verification of documents like DL / RC from other states.

230. Exchange of Data between Commercial Courts and Registrar of Companies: On a suggestion put forth by High Court of Delhi to the task force on Ease of Doing Business which is looking after enhancing the efficiency of Commercial Courts established under

Commercial Courts Act, 2015, APIs were designed and exchanged between the database of CIS which is utilised by judiciary for generation of eSummons and the database of Registrar of Companies under Ministry of Commerce which accords registration to the companies under Companies Act, 2013 along with database of all the Directors of the registered companies with their DINs (Director Identification Numbers) and registered addresses. This system is now in place and is being utilised at pilot locations for instant access and verification of updated data.

231. Exchange of Data between Commercial Courts and Revenue Department: Likewise, as discussed supra, APIs have been exchanged between CIS of judiciary and database of Revenue Department. Such a digital real time exchange of data not only ensures that all the disputes pertaining to a particular property or a piece of land are brought to the notice of the Revenue Department but it also ensures that the Commercial Court dealing with a dispute qua a property or a piece of land also gets to know about all existing, pending and adjudged cases qua the same.

232. eGovernance Mission Mode Project of Government of India mandated all Ministries, Departments and Public Sector Undertakings to digitize their data and day-to-day working. In so far as the eGovernance project is good two decades old, all the digitization has already been carried out by all major Ministries and Departments. Under the Bharat API initiative of Ministry of IT, Government of India, the National eGovernance Division (NeGD) 18 apex officers, 53 Ministries, 54 Departments and 86

Commissions have created their independent databases. 36 States and UTs along with other independent apex bodies, Departments, Boards, Undertakings, Statutory Bodies and Commissions are already coordinating and delivering Government to Government (G2G), Government to Business (G2B) and Government to Citizen (G2C) eServices through APIs under Digital India initiative.

233. Taking advantage of this digital revolution, in order to tackle the menace of accused/suspect absconding during the investigation/trial, there is need to interlink the criminal justice system with the available governmental/institutional databases.

234. Lack of comprehensive cohesive initiative in this regard has led to spiralling of crime in the city state of New Delhi. Doubling of number of proclaim offenders from 13,521 Proclaimed Offenders as in March 2010 which has now reached more than 28,000 in the year 2021.

235. The databases which can be interlinked with CCTNS of Police and CIS of judiciary include i) VAHAN, SARATHI of MoRTH, ii) Aadhaar, iii) Bank Accounts, iv) Land records, iv) Mobile Phone records, v) Passport, vi) Insurance, vii) Income Tax and like.

236. Creation of a dedicated Cell for Tracking and Arresting Proclaimed Offenders: Considering the fact that in the last around 10 years the number of POs in Delhi has swelled to double from 13,500 in 2010 to 28,000+ in 2021, there is a need to create a dedicated cell for digital tracking and arrest of these POs. Such cells in other States and UTs can exchange real-time data to contain these outlaws. This

will help restore Law and Order and will bring down spiralling Crime.

237. *Unified Criminal Justice System* (UCJS) propounds a unified software environment which connects each and every duty holder under criminal justice system in a seamless manner alongside an AI-enabled intelligent data keeping. It has the potential of bringing a dynamic unison of each and every data produced and consumed by the different stakeholders of criminal justice system. It will avoid duplicity and disparity in data keeping between stakeholders like Police, Judiciary, Prisons, Forensics, Prosecution, Legal Services and others. With intelligent use of APIs, identity of the accused can be verified instantly through Aadhaar, Voter ID and Passport databases. Address verifications can be done through Municipal and Revenue databases. Identity documents like Driving License, PAN etc. can also be verified in no time through APIs of respective databases. Details of previous arrests, prosecutions, convictions etc. can also be ascertained and utilized once digital/paperless investigation is carried out under the data keeping prototype proposed by UCJS.

Submissions of Prof. (Dr.) G.S. Bajpai, Vice Chancellor of Rajiv Gandhi National University of Law, Punjab and Former Professor of Criminology and Criminal Justice, National Law University, Delhi as Amicus Curiae

Part-I – Due process under Section 82 CrPC

238. Section 82 CrPC lays down the process for proclamation of persons absconding as offenders. Section 82(1) provides that where

the Court has reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself such that the warrant cannot be executed, the Court may publish a written proclamation requiring the person to appear at a specified date and time not less than thirty days from the date of proclamation. Section 82(2) lays down the manner in which the proclamation shall be published, which includes its reading in a conspicuous place of the town or village where the person resides; affixation to a conspicuous part of the house or homestead where the person resides; affixation of a copy of the proclamation to a conspicuous part of the Court House and the same may also be published in a daily newspaper. Section 82(4) lays down that where the proclamation provided for in Section 82(1) is in respect of a person accused of an offence specified in the section and such person fails to appear at the specified place and time, the Court may pronounce him a *proclaimed offender* after making such inquiry as it deems fit.

239. As per the NCRB Crime in Indian Statistics, 2019, for the 2,67,19,411 processes (for summons, bailable warrants, non-bailable warrants and other processes) received by the Police throughout the year, 28,47,906 remained unserved. In this regard, the Bureau of Police Research and Development, identified two problems with respect to service of summons/warrants. Firstly, wrong/incomplete identification of the arrested persons. Bureau of Police Research and Development identifies the point of arrest of a person as the point at which the Criminal Justice System records the particulars of the person arrested. Secondly, Bureau of Police Research and

Development identifies problems pertaining to insufficient manpower, failure to leverage advances in technology and failure to revamp police processes which lead to problems in service of summons/warrants despite having correctly identified the particulars of the accused.

240. A similar conclusion was reached by a research project undertaken by the Jharkhand Judicial Academy at the instance of the Ministry of Law and Justice. The project attempted to identify the root causes for the non-appearance of accused and posed the query to Judicial Officers, Superintendent of Police, Deputy Commissioner and Public Prosecutors. Several respondents pointed out that the non-appearance of the accused could be due to reasons of both a deliberate attempt to evade justice or by simple ignorance. Nevertheless, the respondents also outlined other reasons for a non-appearance:

- (i) Non-execution of warrant by police due to non-availability of residential address of the accused, inaction of police in serving the summons;
- (ii) Misuse of bail;
- (iii) Lack of stipulated time frame for conclusion of criminal trial;
- (iv) Lack of technological and scientific methods in recording the details of the accused etc.,
- (v) It is also highlighted that non-execution of processes by the prosecuting agency effectively. (Letter No.06/law-03/2014-1364 Dt.07/03/2014 of Home Dept., issued by Principal Secretary, Govt., of Jharkhand is not being followed etc.,)

- (vi) The migration of accused belonging low income group to other States for livelihood, illiteracy;
- (vii) Lack of information about the court process.

241. From the abovementioned sources, among other problems, a common theme that emerges is with respect to the inability of the Criminal Justice System to identify the correct residential addresses of the person accused both at the stage of investigation as well as the trial. The same can also be gauged by a *prima facie* perusal of the details of *proclaimed offenders* as available on the website of the Goa state police. A peculiar distinction between the data on *proclaimed offenders* as collated by the state of Goa and other Indian states examined by the research team is that the state of Goa also specifies whether the accused was released on bail by the police/Court.

242. It can be plainly observed from the above that complete residential details of the *proclaimed offender* aren't available in several instances even where the *proclaimed offender* had been released by the police/Court, despite Form No. 45 in the CrPC dedicating a space for the same. The practise of merely noting down the name of the town and State from which the *proclaimed offender* belongs seems to have gained general acceptance in the application of our criminal justice processes.

243. It can be expected therefore, that such information is not gathered by the investigating agencies at the time of investigation in

great detail either.

244. The investigating officer must be enjoined the duty to collect several particulars at the stage of investigation including the complete residential address and permanent address of the accused and the contact details including the telephone and mobile phone numbers and email addresses of the accused. The investigating officer must also be required to collect information as regards the social media accounts of the accused, given that such accounts may also lead to information as regards the whereabouts of the accused. Such details may be collected in terms of the pro-forma attached with the submissions.

245. The abovementioned details of the accused must also be collected by the police/Court at the time of the grant of bail. Such details must be collected in addition to the requirements of Form No. 45 and in the manner stipulated in the pro-forma attached with the submissions.

246. The proceedings under Section 82(2) must be required to be photographed and video-graphed. Further, pursuant to any process under Section 82, the Process Server must be required to fill out the pro-forma and submit the same to the Court.

247. Another problem faced by the Amicus in the compilation of the report, which acted as a bar to a comprehensive study of the factors which encourage absconding are incomplete presentation of data relating to absconders and *proclaimed offenders* by the police. The National Crime Records Bureau (NCRB) may be directed to gather data in a manner conducive to further studies. In particular,

the NCRB may be directed to collect and display particulars regarding the offence(s) of which the person was accused and whether the person absconded at the stage of investigation or after bail from police/Court.

Part-II - Attachment of property under Section 83 and prosecution under Section 174A IPC

248. The same problem with respect to the inability of the Criminal Justice System to identify the correct residential address of the accused and which acts as a bar to the service of summons also acts as a bar to the proceedings pertaining to the attachment of property under Section 83 CrPC. The solution as regards proper recording of the residential addresses, phone numbers, mobile numbers, social media accounts of the accused through would also work effectively towards securing the attachment of the residential property in the name of the accused.

249. It was further submitted that the pro-forma lists out the categories of movable and immovable properties in the name of the accused for which the investigating officer must collect information. Similar information must also be required from the accused at the time of grant of bail by the Court/ police. Such proformas can go a long way in securing successful attachment proceedings under Section 83 CrPC.

250. However, certain practical difficulties have been pointed out by the Jharkhand Judicial Academy in its report as regards the attachment processes under Section 83. The relevant portion of the report is reproduced hereunder:

“Difficulty in securing the witnesses in the instances of proclamation due to lack of effective witness protection mechanism; in cases of attachment of movable property such as cattle etc., situated in rural areas, difficulty of transportation and non-cooperation of localities to keep in custody of such property are the other reasons specified relevant to the practical difficulties in execution of processes issued by the court.”

251. Addressing these practical difficulties requires addressing broader institutional issues including that of increased manpower and infrastructure for policing and promotion of community policing mechanisms.

252. Prof. (Dr.) G.S. Bajpai has submitted the formats of the proforma to be collected by the investigator during investigation; proforma of details to be furnished by the accused at the time of bail; and proforma of details regarding publication under Section 82.

Submissions of Mr. Rajshekhar Rao, Senior Advocate as Amicus Curiae

253. Sections 82 and 83 CrPC secures presence of the person. Depending on the nature of the offence, the person absconding may be declared as a ‘proclaimed person’ or a ‘*proclaimed offender*’ under Section 82(2) CrPC. Courts also have the power to attach properties of a proclaimed person in order to secure appearance under Section 83(3) CrPC.

254. Unlike in case of a ‘*proclaimed person*’, powers of arrest have been given to various persons in case of a ‘*proclaimed offender*’. Powers have also been given to officers employed in connection with affairs of a village to communicate to the nearest magistrate or

officer in charge of a police station, any information relating to a *proclaimed offender* under Section 40(1)(b) CrPC. *Proclaimed offenders* may also be arrested by private persons, or any person to whom a warrant is directed by the Chief Judicial Magistrate or the Magistrate of First Class or by a police officer without an order from a Magistrate or a warrant.

255. When the Code was initially enacted, for the purpose of Section 40(1)(b) CrPC a '*proclaimed offender*' was defined as including a person proclaimed as an offender by any Court to which the Code does not extend for commission of offences in the territories to which the Code extends which are punishable under Sections 302, 304, 382, 392-399, 402, 435, 436, 449, 450 and 457-460 of IPC. While Section 82 CrPC was limited to declaration of a '*proclaimed person*'.

256. Section 82 CrPC was subsequently amended vide the Criminal Amendment Act 2005 w.e.f. 23.06.2006 to include sub-section (4) and (5) which provide for declaration of a '*proclaimed offender*'. As per Section 82(4), a '*proclaimed person*' under Section 82(1) who fails to adhere to the proclamation and is accused of offences under Section 302, 304, 364, 367, 382, 392-399, 400, 402, 436, 449, 459-460 of IPC may be declared as a '*proclaimed offender*'. At the time of amendment of Section 82, the definition of '*proclaimed offender*' for the purpose of Section 40 was not amended.

257. Despite the fact that ample powers have been granted in the Code of Criminal Procedure for declaration of a '*proclaimed person*' and a '*proclaimed offender*' and their arrest with the sole objective

of their appearance before a Court, such powers must be exercised keeping in mind

constitutional rights of those sought to arrested as stipulated in Article 207,

218 and 229 of the Constitution and in compliance with guidelines framed by the Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

258. The procedure for declaration of a ‘proclaimed person’ and a ‘proclaimed offender’ as stipulated in the Code of Criminal Procedure, comprises of various steps.

Publication of Proclamation under Section 82(1) CrPC

259. A proclamation may only be published directing that the ‘proclaimed person’ appear at a specified time and place not less than 30 days from the date of publication, once the Court is satisfied that: a warrant of arrest has already been issued and all possible attempts to execute the warrant have been made and subsequent to a warrant having been issued the person is absconding or concealing himself in a manner to avoid execution of the warrant.

Enquiry to ensure that warrant of arrest has been issued and all efforts to execute the same have been made by the Police Officer

260. It is necessary that prior to issue of proclamation, a warrant as per the Second Schedule, Form No. 2 or Form No. 9 of the Code has already been issued. The warrant must be issued keeping in mind the guidelines framed by the Supreme Court in *Raghuvansh Dewchand Bhasin v. State of Maharashtra* (supra).

261. It is also essential that all possible efforts to execute the warrant of arrest were made by the police officials. The CrPC provides ample powers to police officers to execute arrest warrants. As per Section 77 CrPC, a warrant of arrest may be executed at any place in India. A warrant may also be executed outside the local jurisdiction of the court issuing the warrant. However, the Code does not provide any rules/guidelines to be followed by the police officers in course of execution of a warrant of arrest as have been provided for service of summons in Sections 62-69 CrPC. In the absence of such rules, guidelines were issued by the High Court of Madras wherein it was directed that in case a warrant cannot be executed within 30 days, (i) the officer concerned must file a status report, exhaustively reflecting the steps taken by him and if it is expressed that there are prospects of securing the person concerned before long, reasonable time may be granted by the Judicial Officer not exceeding 15 days by way of extension and (ii) if the officer concerned assigns valid reasons and expresses inability to secure the person against whom the warrant is issued, after examining the reasons and assessing the facts and circumstances of the case and after fully being satisfied that the accused is obviously evading arrest, the Court shall resort to the procedure adumbrated in Section 82 CrPC.

Procedure to be followed for service of summons under the CrPC

262. Every summons shall be served by a police officer personally on the person summoned or by delivering or tendering him one of the duplicates of the summons. The police officer may also require

the person summoned to sign a receipt on the back of a duplicate. Summons may be served on corporate bodies and societies by registered post. In the event, the person summoned cannot, by the exercise of due diligence be found, summons may be served on an adult male member of his family. In the event, it is not possible for the police officer to follow any of the afore-mentioned modes, he may also affix one of the duplicates of the summons to a conspicuous part of the house in which the person ordinarily resides. Thereafter, on the basis of the steps taken by the police officer to effect service of the summons, the Court may, after making enquiries as it thinks fit, either declare that summons has been duly served or order fresh service of summons. As such, the Court is required to make an enquiry as to whether the police officer has in fact, taken any steps/the proper steps to effect service of summons.

Enquiry to ensure that warrant of arrest cannot be executed despite all efforts of the police officer as the person is absconding or concealing himself

263. It is pertinent that prior to issuing a proclamation under Section 82(1), the Court shall record a finding that (i) all necessary efforts for execution of warrant have been made and (ii) the only reason the warrant has remained unexecuted is that the person concerned is '*absconding or concealing himself so that warrant cannot be executed*'. Proclamations cannot be treated as proof of execution of the warrant.¹⁶ The expression 'reason to believe' occurring in Section 82 CrPC suggests that the Court must be subjectively satisfied and record its reasons for coming to the

conclusion that the person has absconded or has concealed himself on the basis of evidence or even without taking evidence.

**Manner of publication of proclamation (issued under Section 82(1))
under Section 82(2)**

264. As per Section 82(2), a proclamation may be published in two ways i.e., (i) publicly read, affixed to a conspicuous part of the house or homestead in which the person ordinarily resides or to a conspicuous part of the town or village or the court house and (ii) publication of the proclamation in a daily newspaper circulated in the area where the person ordinarily resides. However, (ii) above may only be resorted to if the court thinks fit and is not an alternative to (i) above, while (i) is mandatory. As such, in view of the serious repercussions that publication of a proclamation has on an individual, it is essential to ensure that a proclamation is published only in the manner provided in Section 82(2). Thus, the Court must apply its mind to see if the proclamation has been issued in compliance with Section 82(1), Section 82(2)(i) has been complied with and if, in the facts and circumstances of the case, it is necessary to resort to publication under Section 82(2)(ii). The Court must further record a statement under Section 82(3) stating that Section 82(2)(i) has been complied with.

Declaration as a Proclaimed Offender under Section 82(4)

265. In the event, a 'proclaimed person' against whom a proclamation under Section 82(1) was duly issued and published, fails to comply with the said proclamation, may be declared as a

'*proclaimed offender*' in case the proclamation had been published with respect to offences punishable under Section 302, 304, 364, 367, 382, 392-400, 402, 436, 449, 459-460 of IPC. As such, only a person accused of these offences may be declared a '*proclaimed offender*' after an inquiry in that regard has been conducted. Hence, not all 'proclaimed persons' can be declared as '*proclaimed offenders*'. Only those who are accused of the aforesaid offences may be so declared. Subsequent to declaration as a *proclaimed offender*, publication of the declaration must take place in the manner stipulated in Section 82(2) and 82(3).

Registration of FIR under Section 174A IPC

266. Section 174A was inserted via the Criminal Amendment Act of 2005 in the IPC wherein the following were included as offences: non-compliance with a proclamation issued under Section 82(1) of CrPC shall be punishable with imprisonment for a term which may extend to three years or with fine or both; A declaration under Section 82(4) is punishable with imprisonment for a term which may extend to seven years and fine.

267. Hence, proceedings under Section 174A IPC may only be initiated after a proclamation under Section 82(1) has been issued. As per Circular dated 01st January, 2014 issued by the office of Deputy Commissioner of Police, Legal Cell, Delhi in the event a chargesheet has already been filed prior to the accused having been declared a '*proclaimed offender*', a supplementary chargesheet must be filed for the offence under Section 174A IPC. The Circular further states that in a Complaint case, where no fresh FIR exists, a

fresh FIR under Section 174A should be registered when information with respect to an offence under Section 174A IPC is received.

Attachment of property of a 'proclaimed person' under Section 83

CrPC

268. The provisions of Sections 83 to 84 become applicable on the issuance of the proclamation under Section 82(1) and are not dependent on the declaration under Section 82(4). As such, even though 'proclaimed persons' who are not accused of offences stipulated under Section 82(4) cannot be declared as 'proclaimed offenders', their properties may be attached under Section 83.

269. Once a proclamation has been issued against a person under Section 82(1), his/her properties may be attached provided that the Court is satisfied either by affidavit or otherwise that the person is about to dispose of the whole or any part of his/her property or secondly that she/he is about to remove whole or part of the property from the local jurisdiction of the court. The Court must record its reasons in writing for ordering the attachment of any property under Section 83.

Procedural irregularities

270. Even though it is essential to ensure that provisions of the Code are complied with in letter and spirit, in view of the changing structure of society, literal compliance of the provisions may defeat the purpose sought to be achieved. At the time the Code was enacted, people engaged socially in larger groups, lived in joint families, male members of the family were decision makers while

women remained in purdah or did not engage with persons outside the family and no recognition had been given to the concept of gender fluidity. However, since enactment of the Code vast recognition has been given to rights of women and the right of persons to choose to be identified as belonging to a particular gender. Social engagements are now most active on the internet as opposed to engagements within territorial limits of a person's residence and most people choose to live alone or in nuclear families. As such, while one option could be to try and serve a neighbor when the accused lives alone or where there are no family members present. This too must be done after at least 2-3 attempts to serve the accused or a family member. The attempts should ideally be spaced out over a time frame of a few days and duly recorded. It is only then than other means of service ought to be considered.

271. In addition to the usual option of publicly reading out a proclamation/declaration, it must also be affixed, both, on a conspicuous part of the house where the person ordinarily resides as well as on a conspicuous part of the courthouse or locality.

272. Additionally, limiting service of summons to male members of the family, may lead to an anomalous situation in the absence of persons who recognize themselves as male members. Interestingly, when person summoned cannot be found, Section 64 of CrPC limits service of summons on an adult male member of the family while Order 5 Rule 15 of the CPC in a similar situation permits service of summons on a male or female member of the family.

273. Additionally, it is noted that there are no Rules in the Code for execution of a warrant. In order to ensure that process under Sections 82 and 83 CrPC is initiated only against those who are, in fact, 'absconding' or 'concealing' themselves, it is necessary that the procedural requirements for service of summons, as stipulated under the Code are also extended to execution of warrants and an effort is made to execute the arrest warrants at the earliest through all possible modes. Even though the Code and the Delhi High Court Rules (Vol IV, Chapter 8, Part A, Rule 5) envisage filing of an affidavit of the police officer only in cases where summons are served outside the jurisdiction, in view of the grave consequences attached with execution of an arrest warrant, it may be helpful if police officers are directed to file such affidavits with regard to execution of warrants as well. Furthermore, ensuring that the Affidavits provide complete information as regards the steps taken by the officer and the underlying documentation would go a long way in ensuring accountability in this regard and would prevent accused persons from taking shelter under technicalities later.

274. While the purpose of a declaration under Section 82(4) is merely to secure the presence of the accused, given that serious consequences ensue upon such a declaration including, inter alia, the inability to seek anticipatory bail, the inability to enjoy one's property and the inability to move freely, it is imperative that these orders are passed strictly in accordance with the law and, more importantly, in compliance with its letter and spirit i.e., by due application mind to each case.

Comments on the suggestions previously accepted by Delhi Police vis-à-vis fundamental rights of accused

275. As per the suggestions previously made and accepted by the Delhi Police, it appears that a suggestion to ascertain details of employers and blood relatives of the accused was accepted. Any such suggestion, if implemented, may be in violation of the right of privacy of the accused, his/her employers and their relatives. Right of privacy has now been recognized as a fundamental right within Article 21 of the Constitution. It is necessary to keep in mind that 'proclaimed offenders' are different from 'habitual offenders' in that a *proclaimed offender* may not necessarily have been convicted of an offence.

276. It has further been suggested that the accused be made to surrender their passport in sessions trial cases. However, the said suggestion is contrary to the provisions of the Code. While the police officer may have the power to seize a passport under Section 102(1) CrPC, he does not have the power to retain or impound the same. Hence, any such passport, if seized, will have to be sent to the passport authority and it is for the passport authority to decide whether to impound the passport or not. Courts have also specifically held that imposing a condition on the accused while granting bail to take permission of the court before going out of India is not permissible.

277. Given that the object of this exercise is to ensure participation of the accused in the judicial process, one could also consider taking steps which prevent the accused from being able to sustain

himself/herself economically. This could be done by denying access to financial services viz., Bank accounts, credit cards etc. and denial of other essential services. However, this could also have serious consequences and would have to be carefully considered and applied on a case to case basis.

Suggestions of Mr. Rajshekhhar Rao, Senior Advocate as Amicus Curiae

278. Prior to issuance of a proclamation under Section 82(1), the police officer may be mandatorily required to file an Affidavit/Status Report disclosing: all available addresses and phone numbers/email addresses (if available) of the person against whom the warrant has been issued along with proof of the said addresses, phone numbers/email addresses and any other details available in the information sheet with underlying documents demonstrating the same.

- (i) Particulars of proof of service of the arrest warrant at the said address by post; by hand; mobile number; email address and by service on a family member/neighbor along with credible proof of the same.
- (ii) In the event warrant has been affixed on a conspicuous part of the house where the person ordinarily resides, town/village/courthouse, the police officer must annex a picture showing that warrant has been affixed in such manner along with his affidavit. The picture must be taken in a manner that makes it clear to the Court that the warrant has in fact, been affixed at the said house;

- (iii) Reasons for inability of the police officer in securing presence of the person against whom warrant is issued;
- (iv) The Court must pass an order dealing with the contents of the Affidavit/Status Report and reasons given by the police officer for arriving at a conclusion that the person has '*absconded or is concealing*' himself or reasons for inability of the officer in securing presence of the person.

279. Prior to publication under Section 82(2)(ii): the Police Officer may be mandatorily required to file an Affidavit disclosing: a picture showing that proclamation has been affixed in a conspicuous place of the house where the person resides. The picture must be taken in a manner that makes it clear to the Court that the proclamation has in fact, been affixed at the said house; the Court must pass an order dealing with the contents of the Affidavit and statement of the process server along with its reasons for directing publication under Section 82(2)(ii).

280. Prior to issuance of a declaration under Section 82(4), the Court must mandatorily record a statement to the effect that the person has, in fact, been accused of an offence contained in Section 82(4) and has failed to appear despite a validly issued proclamation;

281. In complaint cases, the Complainant should disclose all possible known addresses of the accused along with proof of address and state on affidavit that those addresses are correct to his knowledge.

282. At the time of grant of bail, accused must be made to disclose the address where they ordinarily reside or any other address and

share a copy of their Government ID proofs such as Aadhar, PAN Card, driving license, Voter ID etc. Subsequent to grant of bail, it must be made mandatory for the accused to disclose any change in address proof failing which, it would be deemed that the address previously shared by the accused was good for the purpose of all legal compliances.

283. Every judge must, on a monthly basis, submit to the Sessions Judge, details of matters where process under Sections 82-83 CrPC has been initiated along with details showing that all the requirements under Sections 82 and 83 CrPC have been complied with.

284. Every Sessions Judge must be made to review the details of matters where process under Section 82-83 CrPC has been initiated by its subordinate judges.

285. Details of matters where process under Sections 82-83 CrPC has been initiated by the Sessions Court Judge and subordinate judges must be placed before the ACR Committee of judicial officers.

Submissions of Mr. Vikas Pahwa, Senior Advocate as Amicus Curiae

Legal History behind the notion of 'Proclaimed offender'

286. The notion of a *Proclaimed offender* as it exists today did not always find a place in the Code. In the 1872 Code, there was no mention of *Proclaimed offender*. It was in Section 45 of the 1882 Code that the words were first found, only in respect of the duties of

village officers to make a report. In 1894, an explanation clause was added to Section 45 thereby expanding the definition of *Proclaimed offender*. This was the first instance when the list of Sections currently found in Section 82(4) found a place in the Code. The 1898 Code retained Section 45 with respect to *Proclaimed offenders* in its amended form, which today is Section 40 CrPC, 1973.

Summons, Warrants and their Compliances

287. Chapter VI of the CrPC titled as “*Process to compel appearance*” explains the procedure to secure the presence of persons before the Court in detail namely, either (a) *summons* or (b) *warrants of arrest*, may be issued by a Court to ensure a person is present before it. Although the Code does not provide for a distinction, in practice two kinds of warrants may be issued, (i) bailable warrants and (ii) non-bailable warrants. The Supreme Court in *Inder Mohan Goswami v. State of Uttaranchal* (supra) provided some guidelines on how this discretion vested with a court may be exercised.

288. If summons were sent to Y and he failed to comply without tendering any explanation, a warrant may be issued for his arrest. Section 87 CrPC. enables a warrant to be issued even where summons have not been sent. What happens when despite a warrant being issued, a person fails to appear before the Court? If the court has reason to believe that the person is deliberately avoiding the warrant, Section 82(1) empowers the court to publish written proclamations in accordance with Section 82(2), requiring him to appear before court on a specified place and time. The person to

whom the proclamation is addressed shall be given a period of a minimum of 30 days to present themselves before the Court. The specimen of proclamation requiring the appearance of the accused person is provided under *Form Number 4* of the Second Schedule of CrPC.

The manner in which Proclamation shall be made

289. Sub-section 2 of Section 82 of the CrPC specifies the manner in which proclamation can be made. They are as follows:

- (i) The proclamation shall be read out publicly in a noticeable area that falls under the vicinity of the residential address of the person or it shall be attested to some part of the person's house or on a nearby building. Either of those should be attested to someplace which is observable; or
- (ii) It shall be attached to a noticeable place in the Court.
- (iii) If the Court deems fit, it might give orders for publishing the proclamation on the newspaper which is circulated in the vicinity of the person's residence.

Process of Attachment of property

290. The Court that issues the proclamation might attach any movable or immovable property of such person under Section 83 CrPC when it has a reason to believe (by an affidavit or other evidence) that the person is making an attempt to: dispose of the immovable property; or is going to transfer the immovable property either entirely or partially, to an area outside the local jurisdiction of the concerned Court.

291. The Court's order to attach the property would be authorized within the local jurisdiction. If the attached property is located in another area, then it would be authorized after being endorsed by the District Magistrate of the concerned area. The order of attachment is depicted under Form no. 7 of the Second Schedule of CrPC to compel the appearance of an accused person. On some occasions, the property to be attached might be a debt or a movable property. Section 83(3) has laid down the manner in which such properties could be attached: by seizing such property; or by appointing a receiver; by issuing an order which will obstruct such property from being delivered to the *proclaimed offender* or someone who might receive it on his behalf.

The jurisprudence surrounding issuing of non-bailable warrants

292. The law for issuance of Warrants has been laid down in the Code of Criminal Procedure, 1973 under Chapter VI (Part b) from Sections 70 to 81. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants. Only when in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, should non-bailable warrants be issued. Just as liberty is precious for an individual so is the interest of the society in maintaining Law and Order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the

Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period.

293. In *Geeta Sethi v. State*, (2001) 91 DLT 47, it was emphasized that Courts administering justice on criminal side must always remain alive to the presumption of innocence which is the hallmark of criminal jurisprudence and, thus, a natural consequence is that every accused is clothed with the presumption of innocence and entitled to just, fair and decent trial and the aim of the criminal trial is not humiliating or harassing an accused, but to determine the guilty of the innocence.

294. In *Inder Mohan Goswami v. State of Uttaranchal* (supra), the Supreme Court had laid down few guidelines for the courts with regards to issuance of non-bailable warrants: it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately. Further observed that a non-bailable warrant could be issued if an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law.

295. In *Omwati v. State of UP*, (2004) 4 SCC 425, the Supreme Court held that the warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. First the Court

should direct service of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the Court, in the second instance should issue bailable-warrant. In the third instance, when the Court is fully satisfied that the accused is avoiding the Courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. It was also held that personal liberty is paramount; therefore Courts were cautioned at the first and second instance to refrain from issuing non-bailable warrants. The power being discretionary must be exercised judiciously with extreme care and caution. The Court should properly balance both personal liberty and societal interest before issuing warrants.

The provisions of Section 82 CrPC are mandatory and should be construed strictly. The Court is required to record its satisfaction that the accused has absconded or is concealing himself to avoid execution of warrants

296. In *Rohit Kumar @ Raju v. State of NCT Delhi*, (2007) 98 DRJ 714 it has been observed as follows:

“17. The sine qua non for an action under Section 82 is the prior issuance of warrant of arrest by the Court. There must be a report before the Magistrate that the person against whom the warrant was issued by him had absconded or had been concealing himself so that such warrant can be issued. An attachment warrant can be issued only after the issuance of proclamation.

18. The expression “reason to believe” occurring in Section 82 Cr.P.C. suggests that the Court must be subjectively satisfied that the

person has absconded or has concealed himself on the materials before him. The term “absconded” is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense is to hide oneself. Further, under Section 82 Cr.P.C. the Court issuing proclamation must record its satisfaction that accused had “absconded” or “concealed himself.”

[19] The three clauses (a), (b), and (c) of sub-section (2) (i) of Section 82 Cr.P.C. are conjunctive and not disjunctive. The factum of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-section (2) is optional; it is not an alternative to clause (1). The latter clause is mandatory.”

297. In *Devendra Singh Negi v. State of U.P.*, 1994 Cri LJ 1783, the Allahabad High Court has observed as under:

“14. The words “has absconded or is concealing himself so that such warrant cannot be executed” in Sec. 82 of the Code are significant. Every person who is not immediately available cannot be characterised as an absconder. The court has to record its satisfaction that the accused has absconded or is concealing in order to avoid execution of the warrant. The provisions of Sec. 82 are mandatory and are to be construed strictly. Sec. 82 requires that the court must, in the first instance, issue a warrant and it must put down its reasons for believing that the accused is absconding or concealing himself...”

298. The words “ordinarily resides” used in Section 82 (2)(i)(a) shall be interpreted liberally to mean not just the official address of

the accused but also where the accused ordinarily resides i.e. any place where he would unofficially spend most of his time.

299. In view of above legal propositions, it is crystallised that Section 82(2)(i) are to be mandatorily followed, which are conjunctive and not disjunctive.

Circumstances under which attachment can be made under Section 83 CrPC

300. The property is attached to attract the physical presence of an accused when they do not present themselves after the issuance of notices and warrants. But there are several underlying factors like time, reasons behind the absence of the person, nature of property attached, interested parties to a property and so on. This article is an illustration of the provisions governing proclamation and attachment of property under CrPC.

301. Section 204(1) CrPC states that when the Magistrate who is empowered to take cognizance is satisfied that the case is either a summons case, then he shall issue a summons for the attendance of the person accused or if it's a warrant case, then he may issue a warrant or a summons to present the accused before the Court at a certain time. Section 204(5) states that nothing in this section shall affect the provisions of Section 87 CrPC. The said Section states that the Court that is empowered to issue a summons for a person's appearance may issue an arrest warrant against the said person by penning down the reason behind the same, if:

- (i) The Court has a reason to believe that the person has absconded or would not abide by the summons before or

after the issuance of summons, but before the date when the concerned person was required to present himself before the Court; or

- (ii) The person fails to present himself before the Court and the summons has been served duly on time and no reasonable excuse behind such failure has been given to the Court.

302. The Court that issues the proclamation might attach any movable or immovable property of such person under Section 83 CrPC when it has a reason to believe (by an affidavit or other evidence) that the person is making an attempt to:

- (i) dispose of the immovable property; or
- (ii) is going to transfer the immovable property either entirely or partially, to an area outside the local jurisdiction of the concerned Court.

303. The Court's order to attach the property would be authorized within the local jurisdiction. If the attached property is located in another area, then it would be authorized after being endorsed by the District Magistrate of the concerned area. The order of attachment is depicted under Form 7 of the Second Schedule of CrPC to compel the appearance of an accused person and the order of attachment is depicted under Form 6 of the Second Schedule of CrPC to compel the appearance of a witness.

- (i) If the property to be attached is or is inclusive of livestock or perishable goods, then the Court may grant an order directing the immediate sale of the property. Livestock implies farm

animals which are valued as assets. The proceeds earned from such sale would be put to use in the way directed by the Court.

- (ii) If the person whose property is attached, is apprehended to the Court or appears voluntarily before the Court within a period of two years from the date of attachment of property, the procedure will be as follows:
- (iii) The person must present himself/herself before the Court that issued the order of attachment of property or any Court which is superior to that Court.
- (iv) The person must prove that they did not intend to conceal themselves to avoid the execution of the warrant issued against them.
- (v) The person must prove that they did not have knowledge of the issue of the order of proclamation so as to attend to their property; if the above is proved before the Court, then the property so attached should be delivered back to the person. In case the property is sold, then the net proceeds from the sale should be granted to that person; lastly, if the property is sold partly, then the net proceeds from the part sold and residue of the property shall be delivered back to the person only after recovering all expenditure incurred as a consequence of attachment of the property.

304. The CrPC has established the procedure to handle the attached property very elaborately. While invoking the procedure of attachment of property, for declaring the person a Proclaimed offender, time plays a very vital role. The time which is granted to

the person to present himself before a Court varies from case to case. The period to disclose any claims preferred or objections which are to be made extends to 6 months and the person absconding would only become eligible to be entitled to the property, if he is presented before the Court within 2 years from the issue of proclamation. If any of the above time periods are not accorded with, there is a prominent chance of making the entire process redundant.

305. This Court upon using its discretion may direct an accused, in case there is an apprehension that he may abscond, to file an affidavit giving requisite information like his permanent and current address along with the mobile number, Aadhar, PAN card details and the ward number where the income of the accused is assessed. This affidavit can be directed to be filed along with filling of Bail Bonds when the accused submits to the jurisdiction of the Trial Court. The Court has powers to conduct an inquiry to ascertain the detail of the assets from the Income Tax Department vide the PAN Card details given by the accused in the affidavit. This exercise ensures that the requisite information is available on record to take action against the accused for absconding or concealing himself to avoid the execution of warrants, by issuing proclamation for his appearance and if required attachment of property in accordance with Sections 82 and 83 CrPC.

Conditions for grant of bail have to be just and reasonable

306. It is well settled law that while exercising jurisdiction under Sections 437/438/439 of the CrPC, it is duty of the Court to see that

conditions for grant of bail should not be arbitrary or capricious. It should be just and reasonable. The conditions which can be imposed while granting bail are mentioned in Section 437 CrPC. The Court cannot insist the accused to give cash security or to provide local surety. An essential requirement in the imposition of any condition is that it should result in minimum interference with the personal liberty of accused and rights of police to investigate the case. A balance should be maintained between the personal liberty of the accused and investigational right of police.

307. The Courts while granting bail can also impose the conditions enumerated in Section 437 CrPC, to assure his presence in the Trial Court.

- (i) The Court can direct the accused to furnish his Mobile number along with the undertaking that he/she will always keep his mobile on active mode and share his live location with the Investigating Officer as and when requested. The Accused can also be directed to make a video call to the Investigating Officer periodically. The Accused may be directed to give all available addresses including permanent and the current address along with the proof thereof.
- (ii) The Accused can be bound to give an undertaking that he/she will notify the Investigating Officer in case of change of address.
- (iii) The accused may be directed to furnish Aadhar Card Number, or any other Government ID.

- (iv) The accused may be directed to furnish PAN Card details along with the Income Tax Ward that the accused comes under.

308. It is important to correlate the value of the bail bond with disclosure of assets in terms of *Moti Ram v. State of M.P.*, (1978) 4 SCC 47 in which the Court held that when sureties should be demanded and what sum should be insisted on are dependent on variables and the Court should be liberal in releasing them on their own recognizances by imposing reasonable conditions and - deprecated the practice of demanding heavy sums by way of bail. Similar proposition has been laid down by the Supreme Court in the matter of *Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570.

309. The Supreme Court in above stated judgments, held that while granting bail to an accused, the conditions imposed, if any should not be stringent and be just and reasonable. The stringent conditions if imposed and not capable of compliance, may amount to denial of bail and shall further amount to denial and deprivation of personal liberty, violating the constitutional rights of the accused guaranteed under Article 21 of the Constitution of India.

Suggestions of Mr. Vikas Pahwa, Senior Advocate as Amicus Curiae

At the stage of arrest

310. Section 81 CrPC lays down the procedure to be followed by the Magistrate when the accused is brought to the Court after a warrant had been issued against the accused. At this stage, the

accused shall mandatorily be required to fill Form No. 3 of the Second Schedule of the CrPC. Further, changes be made in the abovementioned form by requiring the accused to furnish proof of his permanent and current address along with the details of Aadhar or any other Government ID and details of the PAN card with the Ward in which the income of the accused gets assessed.

311. The Police at the time of arrest should collect the following information from the accused:

- (i) Mandatory affixation of photograph of the arrestee on the arrest memo.
- (ii) Inclusion of all the mobiles and landlines connections of the arrestee in the arrest memo.
- (iii) Inclusion of, if any & all Social Networking/ IT Communication tools like Email IDs, Facebook, Instagram, LinkedIn, Twitter etc of the arrestee in the Arrest Memo.
- (iv) Creation of a dedicated website for all persons against whom proclamation issued or are declared Proclaimed offender.

At the stage of grant of bail to the accused during investigation

312. It is well settled law that while exercising jurisdiction under Sections 437,438 and 439 CrPC, it is duty of the Court to ensure that in the interest of justice appropriate conditions are imposed for grant of bail to assure the presence of the accused attends the court to answer the charge filed against him by the police and on the subsequent dates thereafter.

313. In terms Section 437(3), the Court may impose conditions that are necessary, in the interest of justice. It is suggested that the accused while filing the bail bond shall be required to furnish an affidavit with:

- (i) Mobile number of the accused person along with the undertaking that he/she will always keep his mobile on active mode and share his live location with the IO if a request is made for the same by the investigating agency.
- (ii) The Accused can also be directed to make a video call to the IO of the case periodically.
- (iii) All available addresses including permanent and the current address long with the proof thereof.
- (iv) Undertaking that he/she will notify the IO in case of change of address.
- (v) Aadhar Card details or details of any other Government Identification Proof.
- (vi) PAN Card details along with the Income Tax Ward that the accused comes under.

314. Section 441 CrPC requires an accused and his sureties to file a bond when the accused is released on bail. It is submitted that changes be made to Form 45 of the Second Schedule requiring the accused to furnish proof of his permanent and current address along with the details of Aadhar or any other Government ID and details of the PAN card and it shall be mandatory for the accused and his surety to fill Form 45 of the Second Schedule, CrPC at the time of filing the bail bond.

At the stage of trial

315. Absconding during Trial can arise in two categories-

- (i) Those who have not entered appearance in trial even once :- It is suggested that, Court conducts a proper inquiry to verify the correct address of the accused on which the process is required to be served. It will have to be certain that the address at which accused is to be served is true and complete
- (ii) The Accused who enters into the jurisdiction of the court after the cognisance is taken by the court:- In this case, the accused should be directed to furnish an affidavit giving his correct address, to ensure regular appearance along with an undertaking that he will provide any additional documents required by the court for the purpose of surveillance/monitoring in case the court apprehends that the accused might abscond during the trial. The apprehension of the accused absconding can be based on past conduct, case history and the peculiar facts & circumstances of the case.

316. The Affidavit furnished by the accused shall contain his occupation, current and permanent address and it must be required that the accused give an undertaking to disclose any change in address, failing which, it would be deemed that the address previously shared by the accused was good for the purpose of all legal compliances.

317. The affidavit shall also contain the Aadhar Card or any other Government ID along with PAN Number, this will ensure that in case the accused absconds, the Investigating agency or the court can enquire from the Income Tax Department about the assets owned by the accused for the purpose of attachment under Section 83 CrPC.

318. In cases where the Court has an apprehension of the accused absconding based on past conduct, case history and the peculiar facts and circumstances of the case, the Court may direct the accused to furnish above mentioned '*Additional Documents*' along with the Affidavit. The Court may direct the accused when he is presented before it to declare his movable and immovable assets as part of these additional documents in a case where the accused has a history of absconding and the court seriously apprehends that the accused might abscond. Such apprehension can be based on past conduct, case history of the accused and the peculiar facts and circumstances of the case.

319. '*Additional documents*' may also include, details of any & all Social Networking/ IT Communication tools like Email IDs, Facebook, Instagram, LinkedIn, Twitter etc of the accused.

320. Further, if the accused absconds after grants of bail, and does not appear in response to a proclamation under section 82 CrPC, proceedings shall be initiated under Section 174A IPC and he/she can also be penalised under Section 229A IPC.

321. Once an accused has been charge-sheeted and he submits to the jurisdiction of the Court, if the court seriously apprehends that the accused may abscond based upon his past conduct, case history

and the peculiar facts & circumstances of the case then upon using its discretion the court may direct such accused to file an affidavit on the first hearing along with additional documents. Such affidavit shall be in the nature of an undertaking that the accused may furnish to the court any additional documents including declaration of all his assets for the purpose of surveillance and monitoring the accused and attachment of property under section 83 CrPC.

322. Lastly, it is submitted that abovementioned Affidavit, Form No. 3 and Form no. 45 of the second schedule of the Criminal Code be filed while keeping in mind the fundamental right to privacy and proportionality of bail conditions to the nature of the offence he/she has been accused of.

Submissions of Mr. Nikhil Goel, Standing Counsel for CBI

Absconding Offenders

323. Para 11.49 of CBI Manual – If during the course of investigation of a case, sufficient evidence justifying the arrest of an accused is collected but the accused is found evading arrest, a warrant of arrest should be obtained immediately and the Investigating Officer should make all possible efforts to trace the whereabouts of the accused. The Supreme Court in *State of Maharashtra v. Dawood Ibrahim Kaskar*, 1997(2) Crimes 92 (SC) held that a warrant of arrest can be issued by the Court against a person, who is accused of a non-bailable offence and is evading arrest. Enquiries should be made from his relatives, friends and other persons who are likely to be aware of his movements and they

should all be warned against harboring him. For tracing the absconders, modern techniques like use of internet/ Facebook, twitter and other Social Media platforms etc. may also be resorted.

Issue of Proclamation

324. Detailed instructions have been issued vide Policy Division Circular No. 10/2013 through letter No. 21/17/2012-PD dated 26th February, 2013 as regards action to be taken where the accused does not appear in response to the proclamation issued under section 82 CrPC. It would be advisable not to register a fresh FIR for the offence under Section 174A IPC in the case in which the absconder is wanted and that this offence may be added in the ongoing case during investigation. The guidelines contained in the circulars issued on the subject by Policy Division from time to time, may be followed.

Issue of Red Notice

325. Para 11.51 of CBI Manual – In case the accused is suspected to be abroad, a Red Notice (earlier called Red Corner Notice) may be got issued from INTERPOL (IPSG Lyons) against him. For getting the Red Notice issued, the prescribed proforma may be obtained from the CBI IPCU or downloaded from CBI Website and it may be forwarded to the CBI IPCU, duly filled in, along with an attested copy of the warrant of arrest, with English translation, photograph and finger prints of the accused, if available. The CBI IPCU will forward the proforma to IPSG and after the Red Notice is issued, a copy will be sent by CBI IPCU to the Branch on whose

request it was got issued. In case the location of absconding accused in a foreign country is known, a request may be made for issue of Diffusion instead of Red Notice. The requirements for issue of Diffusion and the Red Notice are the same. Immediately, after the arrest of an absconder against whom Red Notice/ Diffusion has been got issued, CBI IPCU may be informed to get the Red Notice/Diffusion withdrawn.

Issuance of Look Out Circulars (LOC)

326. Ministry of Home Affairs, Foreigners Division (Immigration Section) vide letter No.25016/10/2017-Imm.(Pt.) dated 22nd February, 2021 has issued detailed guidelines regarding issuance of Look Out Circulars.

Revocation/withholding Passport

327. Ministry of External Affairs, New Delhi may be requested not to provide passport facilities to the absconding accused and also revoke the Passport, if already issued, as provided under Sections 6 and 10 of the Passports Act, 1967. Deputy Director, IPCU, CBI, New Delhi has been appointed as the Nodal Officer for such matters in the CBI.

Recording of Evidence under Section 299 CrPC

328. In all cases in which an accused is absconding, except those of exceedingly trivial or petty nature or when special circumstances exist which make the procedure unnecessary or undesirable, the Court should be requested to record evidence against the absconded offender under Section 299 CrPC.

329. In order to render evidence recorded under Section 299 CrPC admissible at future trial, it must be proved and put on record that the offender has absconded and that there is no immediate prospect of arresting him.

330. In cases where some of the accused are absconding and some are facing trial in the Court the evidence should first be produced to prove that these persons are absconding and that there was no immediate prospect of arresting them. The evidence of the witnesses should thereafter be recorded in the case against those present. Such evidence would be relevant against the absconders under Section 299 CrPC, according to which on the arrest of the absconding accused, the deposition of the witnesses recorded in his absence may be given in evidence against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay or inconvenience which, under the circumstances of the case would be unreasonable. The last ground can easily be cited where a large number of prosecution witnesses have been examined in the absence of the absconding accused.

Publicity regarding Absconded Offenders

331. A descriptive roll, marks of identification and, if possible, a photograph of the absconded offender should be maintained by the Branch in a dossier and wide publicity given to seek public cooperation in the arrest of the absconder. Documents should also be sent to the C.I.D./local Police Station of the State concerned for publication in their Gazette. Policy Division orders/instructions

regarding POs/absconders and Fugitives should be complied with meticulously. The Fugitive Investigation Support Unit (FISU) under DD, IPCU, CBI, New Delhi should be kept informed and their instructions complied with.

332. Rewards for Apprehension of Proclaimed Offenders/Absconders –Para 11.58 of Manual - In suitable cases, the Head of Branch should submit to the Head Office recommendations for rewards for apprehension of the absconded offenders and if the Head Office sanctions the reward, it should be given wide publicity. Guidelines issued vide Policy Division Letter No. 21/18/2012-PD dated 19th June, 2017 may be followed.

Maintenance of Dossiers of Absconders

333. Para 11.59 of CBI Manual – The names of all absconding accused shall be entered in Dossier Sub-Module of CRIMES Module and/or in a register of absconders, which should be maintained in each Branch. It should be ensured that the relevant particulars including those available in audio/video form are entered in the said records, so that adequate steps are taken for arresting them. Records shall be maintained in each Branch for each of the following categories:-

- a) *Proclaimed offenders*/absconders involved in cases registered in the Branch.
- b) *Proclaimed offenders*/absconders wanted in cases of other Branches of CBI, who are residents of places within the jurisdiction of the Branch and are likely to visit their home districts.

334. Retention of Records in cases against Absconders - Para 11.60 of Manual – All documents of the cases in which the accused persons or any one of them is absconding, the case file and the seized property should be carefully preserved so that these may be available when the accused is arrested. Such documents, files and property will not be destroyed for a period of 30 years from the date of proclamation of absconders.

335. Periodical Enquiries - Para 11.61 of CBI Manual – Enquiries should be made about all the *proclaimed offenders* and efforts made for their arrest, by forming special teams whenever necessary. The results of such enquiries and efforts to apprehend them should be mentioned in the Dossier Module or the register kept in the Branches. Instructions issued by the Policy Division and Fugitive Investigation Support Unit in this regard should be complied with meticulously.

336. Removal of Names from Dossier Sub-Module/Registers - Para 11.62 of CBI Manual – Head of Branch may remove the name of *proclaimed offender*/absconders from the register on the occurrence of any of the following contingencies:

- a) Arrest of the accused;
- b) Death of the *proclaimed offender* or expiry of 30 years from the date of proclamation;
- c) Any other good and sufficient reason, e.g., trifling nature of the case or lack of sufficient evidence for a successful prosecution or withdrawal of the case etc.

337. Special Drives - Para 5.7 of CBI Manual – In order to have demonstrative impact, extensive Special drives, preferably at least once every quarter, shall be organized to target the known corrupt departments, organizations and identified public servants so as to attack corruption both at the grass root and high levels. During these drives, extensive and simultaneous searches/ surprise checks shall be conducted to detect and generate quality cases. Each Branch shall identify quality cases for registration during special drives after scrutinizing the SIRs, complaints and other information pending with the Branch.

Impediments in Early Tracing and Detection of Proclaimed Offenders and Taking Legal Action:

338. It would be appropriate to identify existing lacunae in rapid tracing and detection of *proclaimed offenders*. This analysis would allow for more precise understanding of issues involved and to formulate suitable responses.

339. Tracing of *proclaimed offenders* would require accurate personal identification details like: Good quality photographs; Fingerprints; Name, parentage, date of birth, native place and last known address; Copies of Photo Identity documents like passport, PAN card, EPIC card, proof of address etc.; Identification marks and general descriptors like height, prominent facial looks etc.; Communication details: e-mail ID, mobile number, landline number etc.; and Social Media accounts if any: Facebook, WhatsApp etc.

340. Unfortunately, in several of the *Proclaimed offenders* even such basic personal identification details are not easily available or recorded. Without even basic personal details much difficulties arise in reaching out widely to other police districts in eliciting their cooperation in tracing of such P.Os. The non-availability of such basic information may be due to Proclaimed Offenders never having been come in contact in person with investigation agency or courts earlier and even if the Proclaimed Offender had earlier joined investigation or attended courts, the said basic personal identifier details not having been accurately recorded at that stage.

341. Sureties not sufficiently well acquainted with Accused to enable tracing – The power of grant of bail with sureties and bond are often exercised in a mechanical manner and sufficient efforts are not taken to ensure quality of sureties. It's not uncommon to find in many instances that sureties have no particular personal acquaintance with the Proclaimed Offender and are not much helpful in tracing of a Proclaimed Offender. In some instances there may be persons who habitually act as sureties to several accused and have no personal knowhow on the subjects they are giving sureties for. This important safeguard of taking sureties to prevent breach of bail conditions is not effectively exercised. Sufficient due diligence or verification of qualitative nature of sureties is not done in many instances.

342. Insufficient information on familial linkages and circle of close contacts – Apart from basic personal identifiers of the Proclaimed Offenders, it is essential to have sufficient details on

familial linkages and circle of close contacts of Proclaimed Offenders. Such details allow for rapid collection of information on whereabouts of the Proclaimed Offender and to trace his possible movements and detect Proclaimed Offenders more easily. However, such details are not always systematically recorded when Proclaimed Offenders have earlier been in contact with the investigative agency or while attending court. This can lead to delays in tracing of Proclaimed Offenders.

343. Inadequate tracing of technical trails/ leads of Proclaimed Offenders – In the present ICT (Information and Communication Technology) environment there is need to identify digital footprints of Proclaimed Offenders with regard to use of social media, VoIP communication platforms, e-mails, use of cryptocurrency etc apart from traditional communication means like telephone, mobile and letters. For successful tracing and tracking down of Proclaimed Offenders it will be necessary to focus on systematic identification and tracking of technical trails and leads left behind by Proclaimed Offenders. This includes electronic trails on social media, electronic communication etc. This vital area of investigation is not sufficiently prioritized by several investigators while tracing Proclaimed Offenders.

344. Inadequate tracing of financial trails/ leads of Proclaimed Offenders – Tracking and tracing of Proclaimed Offenders through identification of financial and payment trails and leads is increasingly important. With rapid proliferation of e-payment gateways, online purchase, e-commerce facilities, electronic

financial transfers, digital banking platforms etc. it is required to identify possible financial leads that can be used to trace and track Proclaimed Offenders. Use of such methods of detection has is not always done systematically by investigators to have successful outcomes in tracing and detection of Proclaimed Offenders.

345. Delays in identification of properties owned by Proclaimed Offenders – Often Proclaimed Offenders do not possess properties in their own names and have properties in names of close relatives or benami persons or sold off. Further, properties may be dispersed across interstate or international jurisdictions. This leads to much delays in identification of properties owned by declared P.Os. Hence attachment proceedings of properties of Proclaimed Offenders under 83 CrPC are much delayed and not able to be given effect to expeditiously.

346. Timely prevention of Exit of Proclaimed Offenders from India – Systematic efforts are not sometimes taken by investigative agencies in preventing Proclaimed Offenders from leaving India by issue of Look Out Circulars in a timely manner to prevent exit from India through official immigration points. Further remote possibilities of unauthorized exit through land borders or sea routes have to be accounted for. Further if timely steps are not taken to impound or revoke passport of the *Proclaimed offender*, then there exists window of opportunity for the Proclaimed Offender to travel freely in international jurisdictions.

347. Inadequate efforts with tracing Proclaimed Offenders in international jurisdictions –When a Proclaimed Offender is

suspected to have crossed over to an international jurisdiction, systematic efforts to trace the Proclaimed Offenders across international jurisdictions are not always launched by investigative agencies. Assistance of INTERPOL channels are not always taken by means of issue of suitable INTERPOL notice to alert foreign law enforcement agencies on the Proclaimed Offender and seek their assistance in tracing and tracking.

Limited engagement of public assistance in tracing of Proclaimed Offenders

348. Measures are needed to be taken to give wide publicity regarding Proclaimed Offenders mainly by measures detailed in section 82(2) CrPC.

349. However, the scope to further leverage modern ICT platforms to give wide public access and publicity to details of Proclaimed Offenders are not sufficiently utilized in tracing P.Os. Seeking active public assistance in tracing and tracking of Proclaimed Offenders for crowd sourcing critical information in a user friendly and instantaneous manner using ICT platforms remains to be less explored.

Continuous and systematic follow up of leads

350. In cases where FIR is not registered or there is delay in registering as per Section 174A IPC and launch criminal investigations to trace and locate/arrest the accused; there is no systematic recording of efforts being made to track down the Proclaimed Offender and for detailing of leads available and efforts taken. However there are much delays in registering of FIR even

after Proclaimed Offender declaration. Such delays hamper systematic response to be effected.

Procedural Compliance requirements of Section 195 CrPC requirements

351. In Prosecution of cases of Section 174A IPC, the procedural compliance required by Section 195 CrPC at the stage of cognizance needs to be adhered to. In absence of compliance to procedural necessity of complaint, as envisaged under Section 195 CrPC, the prosecution of cases under Section 174A IPC is not possible.

Suggested Measures to Expedite Tracking and Detection Of Proclaimed Offenders

The following steps may be taken once an accused is proclaimed by a criminal court as per provisions of 82 CrPC as a *proclaimed offender*:

Registration of FIR by Jurisdictional Police Station

352. A FIR may be registered in the jurisdictional police station under Section 174A IPC and criminal investigations launched. It is felt that stage of registration of FIR needs to be clarified further i.e. at the time of declaration of Proclaimed Offenders or mandatory period or on apprehension of Proclaimed Offender. The necessity of complaint as per Section 195 CrPC also needs to be kept in view.

Expeditious Steps to Attach Properties of the Proclaimed offender

353. Expeditious steps need to be taken by the investigation officer to locate movable or immovable properties belonging to the

proclaimed offender and attachment by Court without delay of the identified properties as per provisions of Section 83 CrPC.

354. More concerted efforts have to be made to trace down properties in name of Proclaimed Offender either across districts or in different States and in some instances even in international jurisdictions.

355. Systematic search of databases of Registrar of Properties, IT records and revenue records may be useful in faster identification of properties held by Proclaimed Offenders.

Issue of Look Out Circular (LOC)

356. Ministry of Home Affairs, Foreigners Division (Immigration Section) vide letter No.25016/10/2017-Imm.(Pt.) dated 22nd February, 2021 has issued detailed guidelines regarding issuance of LOCs for alerting all Immigration Check Points (ICP). Issue of Look Out Circulars in a timely manner can prevent escape of *Proclaimed offenders* to foreign jurisdictions. However, availability certain basic personal identifiers or passport number would be a pre requisite for issue of Look Out Circulars.

Impounding or Revocation of Passport as per the Passports Act, 1967 section 10(3)(h):

357. Steps to be initiated for impounding or revocation of passport of the *Proclaimed offender*. In the absence of impounding or revocation of passports, the Proclaimed Offenders would be at liberty to travel freely in international jurisdictions. Taking expeditious steps in this regard can be key in curtailing scope for international movements of Proclaimed Offenders.

Publicly Searchable Standardized National Search Database of Proclaimed Offenders

358. Availability of a publicly accessible database on *Proclaimed Offenders* which can be easily checked and searched by the general public can be very useful in eliciting public cooperation in receiving critical timely information on *proclaimed offenders*. The digital platform may have easy user-friendly online mechanism for public to give tip-offs or useful information on P.Os for assistance of law enforcement agencies.

359. The “*Digital Police Portal*” launched by MHA in 2018 is connecting all CCTNS based services as well as different Apps for police are available on this single central portal. Details of *Proclaimed offenders* are publicly accessible on this platform using the following link:

<http://www.digitalpolicecitizenservices.gov.in/centercitizen/login.htm?jsessionid=19854D38557AF143920E52F31BD78129>

360. The existing database may be made more easily accessible and provisions for public to give critical inputs or tip-offs using the digital platform may be considered. Further the database may be made available to Financial Intelligence Unit to develop suitable Red Flag Indicators to track financial transactions by *Proclaimed offenders* and provide Suspicious Transaction Reports that may help identify Proclaimed Offenders.









361. The CBI as National Central Bureau for INTERPOL in India presently hosts on its publicly accessible website extensive details of Red Notice subjects wanted by Indian Law Enforcement Agencies

(<https://cbi.gov.in/Wanted/INTERPOL-Red-Notices>). These fugitives/ absconders are generally suspected to have absconded to international jurisdictions.

Use of INTERPOL channels if Proclaimed offender is suspected to be abroad

362. The Investigating Agency through the Interpol Liaison Officer contact National Central Bureau-New Delhi, CBI requesting issue of suitable INTERPOL Notice through IPSG for locating or tracing the *Proclaimed offender* Abroad.

TYPES OF INTERPOL NOTICES

 RED NOTICE: To seek the location and arrest of wanted persons with a view to extradition or similar lawful action.	 YELLOW NOTICE: To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves.
 BLUE NOTICE: To collect additional information about a person's identity, location or activities in relation to a crime.	 BLACK NOTICE: To seek information on unidentified bodies.
 GREEN NOTICE: To provide warnings and intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.	 ORANGE NOTICE: To warn of an event, a person, an object or a process representing a serious and imminent threat to public safety.
 INTERPOL-UN SECURITY COUNCIL SPECIAL NOTICE: Issued for groups and individuals who are the targets of UN Security Council sanctions committees.	 PURPLE NOTICE: To seek or provide information on modus operandi, objects, devices and concealment methods used by criminals.

363. The International Police Cooperation Unit of CBI coordinates with National Central Bureaux of INTERPOL in 194 member countries of INTERPOL to seek assistance on police to police cooperation basis. Use of INTERPOL notices are an effective means

of communicating information on wanted Proclaimed Offenders in a structured manner to International Law Enforcement Agencies.

Use Formal Channels of International Mutual Legal Assistance:

364. If *Proclaimed* offender is located abroad, for purposes of Mutual legal Assistance from International Jurisdictions, assistance may be sought through formal channels as per extant/latest MHA Guidelines.

(https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines16032020.pdf - Annexure B). The International Police Cooperation Unit of the CBI renders key assistance to Indian Law Enforcement Agencies in this regard through the International Police Cooperation Cell and National Central Bureau-New Delhi.

Verification of Sureties at Time of Bail and Action in case of absconder.

365. At the time of grant of bail by the court of the accused, verification of the sureties is necessary being dire need to avoid any ingenuine surety.

366. This important safeguard of taking sureties to prevent breach of bail conditions needs to be effectively exercised. Sufficient due diligence or verification of qualitative nature of sureties may be necessary to ensure adherence to bail conditions. Necessary legal action also needs to be taken against sureties so as to prevent ingenuine sureties.

Following Financial Trails of Proclaimed Offenders

367. With increase in reliance on electronic commerce, e-banking and payment gateways, it's become all the more important to

identify financial trails of *Proclaimed Offenders* and the clues generated from such analysis of financial trails with close contacts can be critical in tracing of *Proclaimed Offenders*. The use of database of *Proclaimed offenders* by FIU-IND to consider incorporation of suitable RFIs (Red Flag Indicators) may help with identification of financial trails of *Proclaimed Offenders*.

Recording of Certain Identifier Details of Accused

368. There is need for accurate recording of certain identifier details of accused and suspects, especially in crimes of higher gravity, either when they are joining investigation or attending courts for enabling effective tracing in case they become absconders or are declared *Proclaimed Offenders* at a later point in time.

369. A suggestion on possible details that could be voluntarily received from them at a suitable stage either during investigation or while attending court to the extent possible include: Good quality photographs from multiple axes. Fingerprints recorded digitally. Name, parentage, date of birth, native place and last known address. Copies of Photo Identity documents like passport, EPIC card, proof of address etc. Identification marks and general descriptors like height, prominent facial looks etc. Communication details: e-mail ID, mobile number, landline number etc. Social Media account details if any: Facebook, WhatsApp etc. Details of close family members and social acquaintances. Financial accounts details: Bank accounts, PAN card number etc.

Submissions of Ms. Nandita Rao, Additional Standing Counsel for Delhi Police and Suggestions of the Committee constituted by Delhi Police in terms of judgment dated 07th January, 2021

370. Correct and complete addresses of accused/person/s:

- (i) IO shall record the correct and complete present as well as permanent address of the accused person/s at the time of arrest.
- (ii) IO shall cross verify the residential addresses from other supportive authentic documents, but not limited to Voter ID Card, Voter List on web, Driving Licence, Mobile Phone ownership/CDR, Revenue records, Post Office record, Electric Bill, whichever are available and possible.
- (iii) SHO shall personally ensure to verify both permanent and present addresses of the accused person/s physically. During verification, if “Parcha-12”/ Information Sheet is returned un-served, the same shall be intimated to the concerned court.
- (iv) IO shall meticulously record the details in the Case Diaries regarding steps taken to ensure the accuracy of the present, permanent, last known and other address(es) of the accused person/s.
- (v) Similar exercise is also required to be undertaken for the Sureties at the time, when bail is granted to the accused person/s or at the time of his/her release from the jail.

- (vi) The IO, in consultation with the concerned Public Prosecutor/Standing Counsel, must oppose the application for grant of bail to the *Proclaimed offender* or move an application for cancellation of the same, as the case may be, at initial stage, if the IO is not satisfied with the authenticity of the residential address of the accused.

371. Execution of Bond as per the Section 170(2) CrPC – Investigating Officer shall ensure that the accused executes a bond as per the provisions laid in Section 170(2) Cr.P.C. and ensure the appearance of the accused person/s before the concerned Magistrate.

372. Service of Notices/Summons via Instant messaging services i.e. WhatsApp, Telegram, Signal, E-Mail etc. – In its Judgment dated 10th July, 2020 in Suo moto W.P.(C) No.3/2020 in I.A. No.48461/2020 the Supreme Court of India has directed that service of notices, summons and exchange of pleadings/documents may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. This may be put in the regular practice by the I.Os.

373. Due process under Section 82/83 CrPC by Police Officers – During the service of notices/warrants, the Investigation Officer shall follow the due process as mentioned in Section 82/83 CrPC and submit a factual report to the concerned Court. The timeline as mentioned in CrPC or Court orders must be strictly adhered to.

374. Awareness and training of Police Officers regarding distinction between Proclaimed Person and Proclaimed offender

and familiarization of Standing Orders, already issue - In view of the issues concerning *Proclaimed offenders* as it has emerged in the Judgment, it is suggested that following awareness programme may be conducted to sensitize the Supervisory Officers and Investigating Officers on regular interval.

375. Awareness programme for the Police Officers regarding the distinction between *Proclaimed Person* and *Proclaimed offender* may be conducted in view of the legal provisions and various judgments.

376. Delhi Police has already issued Standing Order No. Ops.21 (previous Standing Order No.168/2010), dated 27.02.2010 (copy enclosed as Annexure B-2) and Standing Order No.390/2016, dated 13th July, 2016 for meticulous compliance. Standing Order No. Ops.21 contains comprehensive guidelines for Supervisory and Investigating officers with respect to the action against absconders and *Proclaimed offenders*, whereas Standing Order No.390/2016 recognizes the hard work and commitment of the Police officers for arresting *Proclaimed offenders* by granting them incentives i.e. out of turn promotion and Asadharna Karya Puraskar.

377. **Relevant Provisions**

Code of Criminal Procedure

Section 40 - Duty of officers employed in connection with the affairs of a village to make certain report.—

(1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting—

- (a) *the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;*
- (b) *the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;*
- (c) *the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under Section 143, Section 144, Section 145, Section 147, or Section 148 of the Indian Penal Code (45 of 1860);*
- (d) *the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;*
- (e) *the commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 231 to 238 (both inclusive), 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450, 457 to 460 (both inclusive), 489-A, 489-B, 489-C and 489-D;*
- (f) *any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information.*
- (2) *In this section,—*
- (i) *“village” includes village-lands;*
- (ii) *the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable*

under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive);

(iii) the words “officer employed in connection with the affairs of the village” means a member of the panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village.

Section 82 - Proclamation for person absconding

(1) If Any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

(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 home-stead 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.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in Clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395,

396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

Section 83 - Attachment of property of person absconding

(1) The court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the court,

It may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of

such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the collector of the district in which the land is situate, and in all other cases-

(a) by taking possessions or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

Section 84 - Claims and objections to attachment.

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under Section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under Section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of Section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

Section 85 - Release, sale and restoration of attached property

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under Section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such

Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

Section 86 - Appeal from order rejecting application for restoration of attached property

Any person referred to in sub-section (3) of Section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.

Section 299 - Record of evidence in absence of accused

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently

accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

378. **Indian Penal Code**

Section 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.

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Classification of Offence

Para I

Punishment—Imprisonment for 3 years or fine, or with both—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Para II

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

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Section 229A - Failure by person released on bail or bond to appear in Court

Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation

The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.]

CLASSIFICATION OF OFFENCE

*Punishment—Imprisonment for 1 year, or fine, or both—
Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.*

379. **Law Commission of India Report No.239 –**

*On Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities submitted to the Supreme Court of India in **Virender Kumar Ohri v. Union of India**, WP(C) NO. 341/2004, 03/2012*

2.4 Causes for delay in the progress of Crl. cases in Trial Courts –

Absence of some or all the accused or non-production of under trial prisoners at the stage of framing of charges and during trial. Earnest efforts are not being made by the Police in apprehending and producing the absconding accused. Execution of warrants has become the least priority for the police who have their own reasons – genuine as well as artificial. Where there are large number of accused, the delays on this Proclamation orders under section 82 of the Code of Criminal Procedure can be issued against any person for whose arrest the Magistrate had issued a warrant. The investigating officer has only to convince the Court that the warrantee is evading arrest and has gone into hiding and that the warrant could not be executed. Hence, the initiative has to be taken by the investigation officer. Once the proclamation orders are issued they should be immediately promulgated. Orders of attachment under section 83 of the Code of Criminal Procedure can also be issued simultaneously along with the proclamation orders. The period of 30 days mentioned in section 82 of the Code of Criminal Procedure is

the time allowed to the accused to surrender. The Court issuing a proclamation under section 82 of the Code of Criminal Procedure may at any time order the attachment of any property moveable or immovable both belonging to the proclaimed person. Attachment should be carried out promptly after the proclamation has been properly made and the property of the proclaimed person seized before he has time to transfer, alienate, mortgage or conceal them.

1793. It is necessary that the proclamation order issued under section 82 of the Code of Criminal Procedure should be widely published in the manner provided for in that section. In order to facilitate the arrest of an absconding warrantee or a proclaimed offender, it is also necessary that an effective watch is maintained over his harbourers. Persons who willfully or knowingly harbour such offenders could be prosecuted under section 216 of the Indian Penal Code. It is, therefore, necessary that the widest publicity is given to the proclamation order issued under section 82 of the Code of Criminal Procedure so that its knowledge can be conclusively proved against the harbourer for his successful prosecution under section 216 of the Indian Penal Code.

1794. The Station House Officer should not be satisfied or rest content that the formalities under sections 82 and 83 of the Code of Criminal Procedure have been gone through. As long as the proclaimed offender's name is on the list of proclaimed offenders of his station, he and his station staff are responsible for finding out where he is and who is harbouring him. If the proclaimed offender is learnt to be in the jurisdiction of another station, he should forthwith inform the Station House Officer of the other station to arrest him. Preferably, he can proceed himself or in unavoidable circumstances send his subordinates immediately to arrest the wanted person with the help of the other station staff.

(Emphasis Supplied)

Relevant Judgments

380. In *Lallan Singh v. State of Uttar Pradesh*, (2015) 13 SCC 362, the Special Leave Petition of two convicts convicted of double

murder was dismissed by the Supreme Court on 29th October, 2007. In the meantime, both the convicts had absconded and no action was taken for as long as six years for apprehending the two accused persons or to attach their properties. The Supreme Court directed the Home Secretary of UP to file the affidavit seeking the information mentioned in para 3. The affidavit filed disclosed that 51 convicts were absconding despite their conviction having attained finality. The Supreme Court was not satisfied with the mechanism to apprehend the *Proclaimed Offenders*. The Supreme Court noted that there was no effective mechanism/procedure for apprehending the *Proclaimed Offenders*. The Supreme Court further noted that there is no system to review the cases of *Proclaimed Offenders* at regular intervals or to make the concerned officer accountable for their failure or neglect to take further action by way of attachment of property or otherwise. The Supreme Court further noted that an effective supervisory mechanism is required to deal with the cases of *Proclaimed Offenders*. The Supreme Court directed the Chief Secretaries of States to constitute a State-level Supervisory Committee comprising of the Home Secretary, Law Secretary, Director General of Police and Secretary State Legal Services Authority to monitor and review the cases on six monthly basis. The biannual status report was directed to be submitted to the High Court. Relevant portion of the said judgment is as under:

“3. ... It was in that backdrop that this Court considered it fit to direct the Secretary, Home Department of the State of Uttar Pradesh to file an affidavit setting out the following information:

(i) *The total number of convicts who remain at large despite their conviction having attained finality.*

(ii) *The offences, for which these convicts have been found guilty and sentence of imprisonment awarded to them as also the period for which they are at large despite dismissal of their appeals/revisions be also indicated.*

(iii) *Whether the State has any mechanism for keeping track of cases in which the accused are convicted and sentenced to imprisonment. If so, what is that mechanism and who are the persons/agencies responsible for ensuring apprehension and detention of such convicts who have exhausted all the legal remedies available to them?*

(iv) *Whether mechanism in place is effective having regard to the number of convicts at large despite their conviction having attained finality. If it is not, whether the State proposes to remove the deficiency in such mechanism to ensure that those who are guilty and convicted are apprehended and sent behind the bars to serve out the sentence?*

(v) *Whether in the case at hand, the prosecuting agency or any other agency concerned with the arrest and detention of the accused/convicts has taken any steps for the apprehension of the absconding convicts? If so, to what result? The details of the steps, if any taken by the State Agency concerned, may be set out.*

(vi) *Has anyone within the said agency neglected the discharge of his duty of apprehending the convicts, Awadesh Kumar Singh and Sawaroo in the present case? If so, whether the State proposes to institute any inquiry into the conduct of those responsible for such negligence?*

4. *The Home Secretary has, pursuant to the above direction, filed an affidavit on 11-11-2013 in which it is inter alia stated that as per the reports obtained from the Inspector General of Police (Crime) from the Director General of Police Headquarter, Lucknow,*

there were a total of 51 convicts who are still at large despite their conviction having attained finality.

5. The affidavit goes on to state that non-bailable warrants against the said convicts have been issued and action taken under Sections 82 and 83 of the Code of Criminal Procedure.

6. The particulars of the absconding convicts are also set out in Annexure A, annexed to the affidavit. The affidavit asserts that there is a mechanism in place for apprehending convicts whose convictions have attained finality and that in terms of the said mechanism which includes a monitoring cell comprising the District Judge, the District Magistrate, the Superintendent of Police and the Chief Judicial Magistrate and execution of warrants for apprehending such convicts is monitored on a regular basis.

7. When the matter came up before us on 3-1-2014, we examined [Lallan Singh v. State of U.P., 2014 SCC OnLine SC 1651, wherein it was directed: "1. Heard. The Secretary, Department of Home, State of Uttar Pradesh, presently at Lucknow, has filed an affidavit pursuant to our order dated 19-7-2013. 2. Ms Shobha Dixit, learned Senior Counsel appearing for the respondent State, submits that although there is a mechanism in place for apprehending those who have been convicted for different offences but have not surrendered to custody, certain further steps need to be taken in that direction to strengthen the efficacy of that mechanism. She further submits that the problem of apprehending those convicted for the offences and committing them to jail to serve the sentence awarded by the courts appears to be a bigger phenomenon and needs to be addressed on a countrywide basis. 3. There is merit in the contention of Ms Shobha Dixit. We have come across cases from different States including for instance the State of Bihar where convicts have not surrendered to custody even though their appeals have been dismissed by the High Court years ago. One such

case [SLP (Crl.) No. 9691 of 2010] came before us on 2-1-2014 where out of 10 convicts sentenced to life imprisonment for an offence of murder punishable under Section 302 of the Penal Code, 1860, only 2 have surrendered to custody while the remaining 8 are at large despite lapse of five years since the dismissal of their appeals by the High Court. The situation may not be different in other States also. We are, therefore, inclined to examine this issue in a larger perspective for which purpose we have requested Mr U.U. Lalit, Senior Advocate, to assist the Court as amicus. Mr Lalit has graciously agreed to do so. We, therefore, direct the Registry to furnish to Mr Lalit a copy of our order dated 19-7-2013, the affidavit filed by the Secretary, Department of Home, State of Uttar Pradesh as also the other relevant documents which the amicus may require for this purpose. The Registry shall do the needful within four weeks. Post immediately after four weeks.”] the affidavit filed by the Home Secretary and were prima facie of the view that the mechanism, referred to in the affidavit, was not efficacious and required to be strengthened.

8. We were also of the view that the problem of apprehending convicts who abscond after their convictions attain finality was not confined to the State of Uttar Pradesh only but appear to be a wider phenomena that may require to be addressed on a countrywide basis. We had for that purpose and with a view to evolving an effective mechanism appointed Mr U.U. Lalit, Senior Advocate, to assist the Court as amicus.

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12. The affidavit filed by the Home Secretary suggests that there is a monitoring cell comprising the District Judge, District Magistrate, Superintendent of Police, Chief Judicial Magistrate concerned. Apart from the fact that the cell is rather loosely constituted, it does not appear to be proving effective. We say so because there

is nothing on record to suggest that the cell meets on regular intervals to review cases where convicts have not been apprehended or makes the officers concerned accountable for their failure or neglect or takes further action in the matter whether by way of attachment of property or otherwise.

13. The situation in other States may be no different from what is prevalent in the State of Uttar Pradesh where a very large number of such convicts remain absconding just because the enforcement agency proves inadequate for the job.

14. It is in this backdrop that we propose to issue directions not because we intend to digress from the procedure that CrPC lays down but because the procedure so prescribed ought to be effectively enforced. A close monitoring of the working of the existing mechanism wherever it is in place is required for without such monitoring the process may steadily become wholly ineffective defeating the entire purpose underlying trial and conviction of such offenders. An effective supervisory mechanism would, in our opinion, add to the efficacy of the law enforcement process.

15. Having heard the learned counsel for the parties on the question of composition, any such supervisory mechanism, we are of the opinion that a State-level Supervisory Committee comprising: (i) Secretary to Government, Home Department; (ii) Secretary to Government, Department of Law; (iii) Director General of the State Police; and (iv) Secretary, State Legal Services Authority can be constituted to monitor and review such cases on a six-monthly basis. A biannual status report shall then be submitted by the State-level Committee to the Executive Chairman of the State Legal Services Authority who may in consultation with the Patronage Chief of the State Legal Services Authority take such action in the matter as is considered fit including, if necessary, taking up the matter on the judicial side.

16. We, accordingly, direct the Chief Secretaries of all the States and Union Territories in the country to constitute a State-level Supervisory Committee comprising the members, indicated above, within three months from the date a copy of this order is received by them under intimation to the Chairperson, State Legal Services Authority concerned. We make it clear that the constitution of the State-level Committee is in addition and not in substitution of any existing mechanism at the district level. These proceedings are with the above directions disposed of.”

(Emphasis supplied)

SUMMARY OF PRINCIPLES OF LAW

381. The Criminal Procedure provides different kinds of processes for appearance of accused/suspect. These processes are not only used by Courts seeking the presence of the accused before it during the trial but more importantly by enforcement/investigating agencies such as the Police who seek to ensure that an absconding accused joins the investigation.

382. The purpose of proceeding under Sections 82 and 83 CrPC is to secure the presence of the person. Depending on the nature of the offence, the person absconding or concealing himself may be declared as a ‘Proclaimed Person’ or a ‘Proclaimed Offender’ under Section 82(2) CrPC.

383. Once the Court is satisfied that any person against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed, then such Court can issue a proclamation against such a person.

384. When the Code was initially enacted, for the purpose of Section 40(1)(b) CrPC a '*Proclaimed Offender*' was defined as including a person proclaimed as an offender by any Court to which the Code does not extend for commission of offences in the territories to which the Code extends which are punishable under Sections 302, 304, 382, 392-399, 402, 435, 436, 449, 450 and 457-460 of IPC while Section 82 CrPC was limited to declaration of a '*Proclaimed Person*'.

385. Section 82 CrPC was subsequently amended vide the Criminal Amendment Act 2005 w.e.f. 23rd June, 2006 to include sub-sections (4) and (5) which provide for declaration of a '*Proclaimed Offender*'. As per Section 82(4) CrPC, a '*Proclaimed Person*' under Section 82(1) CrPC who fails to adhere to the proclamation and is also an accused of offences under Section 302, 304, 364, 367, 382, 392-399, 400, 402, 436, 449, 459- 460 of IPC may be declared as a '*Proclaimed Offender*'.

386. The procedure for declaration of a '*Proclaimed Person*' and a '*Proclaimed Offender*' as stipulated in the Code of Criminal Procedure, comprises of the following steps:

- (i) Pre-requisites to issuing a Proclamation under Section 82(1) CrPC – A proclamation may only be published directing that the '*Proclaimed Person*' appear at a specified time and place not less than 30 days from the date of publication, once the Court is satisfied that:
 - (a) A warrant of arrest has already been issued and all possible attempts to execute the warrant have been

made;

(b) Subsequent to a warrant having been issued, the person is absconding or concealing himself in a manner to avoid execution of the warrant.

(ii) Enquiry to ensure that warrant of arrest has been issued and all efforts to execute the same have been made by the Police Officer – Prior to issue of proclamation, a warrant as per the *Second Schedule, Form No. 2 or Form No. 9* of the Code must have been issued.

387. Procedure for Publication of the Proclamation Section 82(2) CrPC –As per section 82(2) CrPC, the proclamation must be read in some conspicuous place of the town or village in which the person resides. It shall also be affixed to some conspicuous part of the house in which the person resides or to some conspicuous place of the town or village. Further, a copy of the same must also be affixed to some conspicuous part of the Court house. The Court may also direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides. The terms of Section 82 CrPC are mandatory and a proclamation cannot be issued without first issuing a warrant of arrest.

388. Where a proclamation published is in respect of a person accused of certain specified heinous offences and such person fails to appear at the specified place and time required by the proclamation may pronounce him a '*Proclaimed Offender*' and make a declaration to that effect under Section 82 CrPC.

389. The Court may pronounce an absconder as a *Proclaimed Offender* if he is accused of any of the following offences:

- (i) Murder; Culpable homicide not amounting to murder
- (ii) Kidnapping or abducting in order to murder; Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.
- (iii) Committing theft after making preparation for death, hurt or restraint in order to commit the theft; committing robbery or attempting to do so; causing hurt in committing robbery; committing dacoity/dacoity with murder; committing robbery/dacoity with attempt to cause death or grievous hurt; attempting to commit robbery/dacoity when armed with deadly weapon; preparing to commit or assembling to commit dacoity; or belonging to a gang of dacoits,
- (iv) Causing mischief by fire or explosive substance with intent to destroy house, etc.
- (v) Committing house-trespass in order to commit offence punishable with death; causing grievous hurt/death while committing lurking house-trespass or house-breaking; being member of group that causes grievous hurt/death while committing lurking house-trespass or house-breaking by night.

390. Pursuant to declaring a person a *Proclaimed Person/Offender* under Section 82 CrPC, the Court is empowered under Section 83 CrPC, to order attachment of the movable and/or immovable

properties of the *Proclaimed Person/Offender* at any time after the issuance of the proclamation under Section 82 CrPC.

391. Sections 83 to 86 CrPC deal with attachment and the effects arising thereof. Section 83 CrPC empowers the Court to attach the property of any person concerned against whom a proclamation has been issued. An order of attachment can only be made after an order of proclamation has been issued for justifiable reasons. However, there is an exception to this general rule in the *proviso* to Section 83 (1) CrPC, the attachment order can be made simultaneously with a proclamation order on two occasions: firstly, when the property is about to be disposed of and secondly, the property is about to be removed from the local jurisdiction of the Court.

392. Process of Attachment of property – The Court that issues the proclamation may attach any movable or immovable property of such person under Section 83 of the CrPC when it has a reason to believe (by an affidavit or other evidence) that the person is making an attempt to:

- (i) dispose of the immovable property; or
- (ii) is going to transfer the immovable property either entirely or partially, to an area outside the local jurisdiction of the concerned Court.

393. The Court's order to attach the property would be authorized within the local jurisdiction. If the attached property is located in another area, then it would be authorized after being endorsed by the District Magistrate of the concerned area. The order of attachment is depicted under Form No. 7 of the Second Schedule of CrPC to

compel the appearance of an accused person. On some occasions, the property to be attached might be a debt or a movable property. Section 83(3) has laid down the manner in which such properties could be attached:

- (i) By seizing such property; or
- (ii) By appointing a receiver;
- (iii) By issuing an order which will obstruct such property from being delivered to the *proclaimed offender* or someone who might receive it on his behalf; or
- (iv) By all or any two of such methods, that the Court deems fit.

394. If the property which has to be attached is immovable, it will be attached *via* Collector of the district where the property is situated when the matter concerns land paying revenue to the State government. In other cases, the property will be attached, by taking possession of the property or by appointing a receiver; or by issuing an order restricting the payment of rent to the person absconding or to anyone on his behalf; or by all or any two of such methods, that the Court deems fit as mentioned in Section 83(4) CrPC.

395. If the property to be attached is inclusive of livestock or perishable goods, then the Court may grant an order directing the immediate sale of the property. The proceeds earned from such sale would be put to use in the way directed by the Court.

396. Restoration of Property – If the person whose property is attached, is apprehended to the Court or appears voluntarily before the Court within a period of two years from the date of attachment of property, the procedure will be as follows:

- (i) The accused presents himself/herself before the Court that issued the order of attachment of property or any Court which is superior to that Court.
- (ii) The accused did not intend to conceal themselves to avoid the execution of the warrant issued against them.
- (iii) The accused did not have knowledge of the issue of the order of proclamation so as to attend to their property.
- (iv) If the above is proved before the Court, then the property so attached is delivered back to the accused. In case the property is sold, then the net proceeds from the sale are granted to that accused.
- (v) Lastly, if the property is sold partly, then the net proceeds from the part sold and residue of the property is delivered back to the accused only after recovering all expenditure incurred as a consequence of attachment of the property.

397. Section 84 CrPC allows any person other than the *Proclaimed Person/Offender* to raise claims/objections in respect of the attachment made for adjudication within six months from the date of attachment, and Section 85 CrPC enables the Court to *inter-alia* deprive the *Proclaimed Person/Offender* of the attached property upon failure to appear within the time specified in the proclamation and accordingly, place the attached property at the disposal of the State Government.

398. The primary responsibility for securing the arrest of a *Proclaimed Person/Offender* rests with the police of the station under whose jurisdiction he is a resident. A *Proclaimed*

Person/Offender may, however, be arrested by any police officer without any order from a Magistrate and without a warrant. Any private person can also arrest a *Proclaimed Offender* and hand him over without unnecessary delay to a police officer/nearest police station.

399. The names of all such *Proclaimed Person/Offenders* have to be recorded in the Police Station Register No.10 (Surveillance Register). The CRO Branch of the SP Office maintains a register of *Proclaimed Offenders* in two parts:

- (i) Part I shall contain the names of all the residents according to the police station of whose jurisdiction the *Proclaimed Offenders* are resident.
- (ii) Part II shall contain the names of all offenders proclaimed who are not resident of the district. These names shall be entered according to the district of which they are said to be resident.

400. Whenever a *Proclaimed Person/Offender* is arrested, intimation is sent to the police station and district of which he was a resident so that his name can be struck off from the register/list of *Proclaimed Offenders*. The name is likewise struck off on receipt of intimation of the death of the proclaimed person.

401. Every member of the village *panchayat*, *chowkidaar*, officer employed in connection with the affairs of the village and every person residing in the village must communicate to the nearest magistrate/police station of any person whom he knows or reasonably suspects to be a *Proclaimed Person/Offender*. As soon as

a police station receives intimation of the proclamation of a resident of its jurisdiction, the *sarpanch* and *chowkidaar* of the village where the *Proclaimed Person/Offender* resides or has relatives or friends that he is likely to visit, shall be informed about the same.

402. Whoever knowingly harbours a *Proclaimed Offender* to prevent his apprehension is liable to be punished under Section 216 IPC with imprisonment upto 7 years in certain cases.

403. Section 174A IPC was inserted by the Criminal Amendment Act of 2005, penalizes the non-appearance of a person as required by a proclamation published under Section 82 CrPC and provides the following punishment: (a) for a term up to three years/fine/both in case of non-appearance consequent to a proclamation under Section 82(1) CrPC; and (b) for a term upto seven years with fine in case of a declaration under Section 82(4) CrPC (in respect of offences under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC.

404. Under Section 229A IPC, the failure of a person to appear before the Court released on bail or bond has been made a penal offence punishable with imprisonment, of either description, for a term which may extend to one year, or with fine, or with both. Section 229A IPC is an addendum to Section 174A IPC.

GUIDELINES

Guidelines for Warrants of Arrest at Investigation Stage

405. NBW against accused evading arrest – The Investigating Officer may apply to a Magistrate for issuance of warrant of arrest

where the offence is cognizable, non-bailable and the accused/suspect is evading his arrest.

406. Investigating Officer to disclose efforts made to arrest – Before applying for warrant, the Investigating Officer shall show the efforts made to arrest the accused.

407. Address on the NBW – The Investigating Officer shall show that the accused is ordinarily residing at or was very recently residing at some address verified by the Investigating Officer and that the accused is not available at that address due to his deliberate intention to avoid the arrest.

408. No NBW on mere absence from house – No warrant shall be issued against an accused merely on the ground that he is not available to the Investigating Officer/Police for joining the investigation.

409. Investigating Officer to share material connecting the accused – The Investigating Officer shall share the material collected by him during investigation before the Court on the basis of which the accused is connected to the crime.

410. Affidavit of the police officer – The police shall file an affidavit disclosing the date, time and mode of service as well as the attempts made to search and identify the accused.

Guidelines for Warrants of Arrest at Trial Stage

411. Abscondance during Trial more serious – At the stage of trial, the accused is normally on bail. The abscondance during trial is more serious than abscondance during investigation as the accused

has already crossed the stage of investigation and has been summoned by the Court to face trial and if the Charge(s) has/have been framed, the finding of existence of *prima facie* case against the accused is on record.

412. Mere non-appearance sufficient – Mere non-appearance of accused without any justified reasons is sufficient justification for issuance of warrants of arrest including NBW by the Court.

413. Court to decide exemption plea – If any authorized person is present before the Court on behalf of any accused and moves an application to show the reasons for non-appearance of the accused, the Court shall decide the application in accordance with the law.

Guidelines for Verification of address(es) of the accused by the police at the stage of Summons/Warrants/Arrest/Surrender

414. Physical verification of address of accused – The Investigating Officer shall ensure the verification of the address of the accused before or after his arrest or while seeking his arrest warrants from the Court.

415. Ratification of address of accused by neighbours during verification – The Investigating Officer shall record in the case diary the name of at least two respectable persons of the locality of the accused with their contact details like addresses and telephone who ratify that the address of the accused mentioned in the arrest memo or the applications for seeking warrants of arrest of the accused is correct and complete and it belongs to the accused.

416. Ascertain permanent address or additional address of accused with verification – The Investigating Officer shall ascertain the

additional addresses of the accused viz. the permanent or the native place address and if addresses are located in other States, the same shall be verified through a subordinate or by the local police of such address disclosed.

417. Append photograph of the dwelling unit of the accused – The Investigating Officer shall take photographs of the dwelling unit of the accused which is shown/claimed to be the address of the accused. In case the Investigating Officer has an internet facility at the Police Station, he shall take the help of printouts of internet maps like Google Maps so as to show the specific location of the house.

418. Documentary proof of address of accused – The Investigating Officer shall collect documentary proof of the address disclosed by the accused and append the same with the Chargesheet.

419. Documentary proof of tenanted premises of the accused – In case an accused is a tenant in the property, a copy of the rent deed/rent receipt or a plain paper declaration by the landlord would be a sufficient compliance of this requirement.

420. Mandatory registration of all property owners/landlords who let their residential/ commercial or industrial property on rent – Delhi being the national capital attracts thousands and lakhs of inbound settlers. The number of crimes committed by this floating population is alarmingly high. Also, the heightened national security scenario demands repeated notification of compulsory Tenant verification drives by Delhi Police. This can be done in a simple online format and also through offline procedure. This would, upon

its linkage to Aadhaar data bank, rule out frequent incidents of abscondance during criminal trials.

421. Disclosure of name and address of three blood relatives of the accused – At the time of arrest, the accused shall share names of at least three blood relatives with their details like address and contact numbers and the nature of the relation.

422. Ascertain mobile and landline connection/email address of the accused – The Investigating Officer shall ascertain all mobile and landline connections issued in the name of the accused/suspect, and/or any identity cards issued in the name of the accused/suspect so as to enable them to establish contact with the accused/suspect. Details such as email address of the accused/suspect wherever available shall also be included in the arrest memo.

423. Ascertain workplace details and address of the accused – The Investigating Officer shall ascertain the work profile/job profile of the accused and shall obtain the complete address and details of his place of work/employer with other contact details.

424. Ascertain details of the head office of the employer of the accused – In case the accused is found to be working in a Government/Private employment, the address of the Head Office of his employer shall be obtained apart from requiring such Employer to share with the Police and Court in case there is a change of place of employment or termination or removal of accused from employment.

425. Documentary proof of workplace details along with photograph – The Investigating Officer shall obtain a documentary

proof of the place of work of the accused and shall record it in the charge sheet as an address where due service can be effected. Photograph of such work place shall also be obtained.

426. Investigating Officer to collect the relevant details of the accused in terms of the format attached hereto as Annexure A – The Investigating Officer shall collect the relevant particulars relating to the complete residential/permanent address of the accused, contact details including telephone/mobile numbers and *email* addresses, social media accounts etc. The Investigating Officer shall fill up the performa attached hereto as **Annexure A** during the investigation.

427. Modification of arrest memos in terms of UID/Aadhaar particulars – Vide Notification No.F.13/13/98/HP-I/ESTT.55-74, dated 05th January, 2001, Lt. Governor, Delhi while exercising powers under Section 147 Of Delhi Police Act, 1978, notified an *Arrest Memo Proforma* proposed by NCRB, Ministry of Home, Government of India.

428. Accused to share photograph, mobile & documentary IDs – At the time of arrest or soon thereafter, the police shall collect the photograph, mobile and landline number, email ID, all Social Networking accounts like *Facebook, Instagram, LinkedIn, Twitter* and IT Communication tools and copies of at least two documents namely Aadhar Card, Passport, PAN Card, Bank Account, Credit card, Ration card, Electricity bill, Landline telephone bill, Voter I.D. Card, Driving Licence from the accused.

429. Accused and surety to inform police and Court of changed address/mobile number – In case of grant of bail, it shall be

mandatory for every accused and surety as a condition for grant of bail that, both the accused and the surety shall inform the police as well as the Court granting the bail about the change of their residential address and/or mobile number/ contact details while the accused is on bail.

430. Mandating disclosure and filing of documents in case of anticipatory bails as well as regular bails before the hearing – The concerned area Magistrate/Court hearing the Bail application shall ensure that the accused shares all the particulars mentioned in **Annexure B**.

431. Area Magistrate to ensure compliance of all guidelines relating to arrest – The concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police.

Guidelines for cases instituted on private criminal complaints

432. Supply of addresses and the documentary proof of such address of accused – The complainant shall share all available addresses of the accused known to him i.e. current/temporary/permanent and workplace. The complainant shall file documentary proof of the address of the accused, if available.

433. Declaration from complainant – The complainant shall state on oath in his affidavit that the address of the accused in the complaint is true and complete to the best of his knowledge.

434. Additional addresses to be shared by Accused – Post entering of appearance by the accused, the accused shall disclose additional

addresses other than those mentioned in complaint to the Court with address proof.

435. Accused to furnish name and address of three of his relatives

– In complaint cases, accused shall furnish name, address, relation and other details of his three relatives for future communication. However, service of summons to those addresses may not be treated as due service under Section 64 CrPC.

436. Photograph and identity proof of the accused and surety –

The photograph and the identity proof of the accused and surety to be affixed on the bail bond.

437. MLAT with Foreign Countries – In case any criminal

complaint or in a case filed by Police, where the accused is alleged to be in a foreign country, the Court shall satisfy whether India has a **Mutual Legal Assistance Treaty (MLAT)** or any other similar Treaty with such country and summons shall be issued under the applicable formats/guidelines.

Guidelines for conditions to be imposed at the time of granting bail

438. At the time of grant of bail, the Court shall direct the accused to (i) disclose the address where they ordinarily reside or any other address, (ii) share a copy of their Government ID proofs such as Aadhar, PAN Card, driving license, Voter ID, Ration card etc.

439. The Courts while granting bail can impose the following conditions to ensure the presence of accused in the Court at the time of hearing:

- (i) The accused to furnish his Mobile number along with the undertaking that he/she will always keep his

mobile on active mode and share his live location with the Investigating Officer as and when requested/ordered.

- (ii) The Accused to make a video call to the Investigating Officer periodically.
- (iii) The Accused to give all available addresses including permanent, current address or any other address where he may reside along with the proof thereof.
- (iv) The Accused to give an undertaking that he/she will notify the Investigating Officer in case of change of address or mobile number.
- (v) The accused to furnish a Government ID.
- (vi) The accused to furnish PAN Card details along with his Income Tax Ward.

440. The accused shall furnish the relevant information relating to his residential/permanent address, details of his family, contact details including telephone/mobile numbers/*email* etc. in the format of **Annexure B** to the court at the time of grant of bail in addition to Form 45 CrPC.

Guidelines for Issuance of Proclamation

441. Proclamation only on deliberate concealment – The police has to submit a report before the Court that the person against whom the warrant was issued, has absconded or is concealing himself.

442. Concealment has to be deliberate – The concealment has to be deliberate for the purpose of avoiding arrest. The mere fact that the police could not find the accused, is not enough.

443. Mere non-availability at address is not sufficient – Mere non-availability at the address is not sufficient unless the concealment is deliberate to avoid arrest. A person who had gone abroad before the issue of the warrant of arrest cannot be said to be absconding or concealing. However, if the accused left India before proclamation but continues to remain outside India with a view to defeat or delay the execution of the warrant, he shall be taken to be absconding.

444. Affidavit/Status Report of the Police – The police officer shall file an affidavit/status report to disclose the addresses and phone numbers/email addresses (if available) of the accused against whom the warrants had been issued and the reasons for inability to secure the presence of the accused before the Court.

445. Pre-requisites to the issuance of a proclamation – Prior to issuance of a proclamation under Section 82(1) CrPC,

(i) The police officer may file an Affidavit/Status Report disclosing:

- (a) All available addresses and phone numbers/email addresses (if available) of the person against whom the warrant has been issued along with proof of the said addresses, phone numbers/email addresses and any other details available in the information sheet with underlying documents demonstrating the same;
- (b) particulars of proof of service of the arrest warrant at the said address (i) by post; (ii) by hand (iii) mobile number, (iv) email address (if any) and (v) service on a family member/neighbor along with credible proof of the same;

- (c) In the event warrant has been affixed on a conspicuous part of the house where the person ordinarily resides, town/village/ courthouse, the police officer must annex a picture showing that warrant has been affixed in such manner along with his affidavit. The picture must be taken in a manner that makes it clear to the Court that the warrant has in fact, been affixed at the said house;
- (d) Reasons for inability of the police officer in securing presence of the person against whom warrant is issued;
- (ii) The Court must pass an order dealing with the contents of the Affidavit/Status Report and reasons given by the police officer for arriving at a conclusion that the person has absconded or is concealing' himself or reasons for inability of the officer in securing presence of the person.

446. Court to record satisfaction – Under Section 82 CrPC, the Court issuing proclamation shall record to its satisfaction that the accused had absconded or concealed himself. The expression 'reason to believe' in Section 82 CrPC means that the Court has to be subjectively satisfied from the materials before it that the person has absconded or has concealed.

447. Court to examine executing officer – Before issuing a proclamation, the Court shall examine the officer with respect to the measures taken by him to execute the warrants.

448. Issuance of arrest warrant a pre-condition – Issuance of an arrest warrant and the accused found absconding, are pre-conditions for issuing proclamation.

449. NBW and Section 82 CrPC not to be issued together - Simultaneous issuance of both the processes, namely, warrant of arrest and proclamation is *ex-facie* contradictory, since it is only after the former that the latter can be issued where the concerned person has absconded or is hiding.

450. Pre-requisites to the publication of a proclamation under Section 82(2)(ii) CrPC – Prior to publication under Section 82(2)(ii) CrPC the Police Officer may be mandatorily required to file an Affidavit disclosing: A picture showing that proclamation has been affixed in a conspicuous place of the house where the person resides. The picture must be taken in a manner that makes it clear to the Court that the proclamation has in fact, been affixed at the said house; The Court must pass an order dealing with the contents of the Affidavit and statement of the process server along with its reasons for directing publication under Section 82(2)(ii).

451. Publication by all three modes essential – Publication by all three modes namely (i) public reading in some conspicuous place of the town/village in such person ordinarily resides; (ii) affixation at some conspicuous part of the house or homestead and (iii) affixation at some conspicuous part of the court house are mandatory under Section 82(2) CrPC. The failure to comply with all the three modes of publication is to be considered invalid publication, according to law as the three sub-clauses (a) to (c) are conjunctive and not disjunctive.

452. Section 82 CrPC to be read as a whole – The three clauses (a), (b) and (c) of Section 82(2)(i) CrPC are conjunctive and not

disjunctive. The factum of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-Section (2) is optional; it is not an alternative to clause (i). The latter clause is mandatory.

453. Photograph of the affixation of proclamation – Prior to the publication under Section 82(2)(i) CrPC, the police shall file an affidavit along with the photographs of the affixation of proclamation on the conspicuous part of the resident of the accused. The police officer shall fill and submit performa in the format of *Annexure C* before the court at the stage of seeking proclamation.

454. Upon publication of the proclamation under Sections 82/83 CrPC, copy of that newspaper be sent by the newspaper agency by post to the address of the accused as being done in Civil matters under Order 5 Rule 10 of CPC.

Guidelines for Enhancing the Efficiency in Execution of Proclamations

455. Mandatory affixation of photograph of the accused on the Arrest Memo – The modified *Arrest Memo* shall also have a mandatory column for affixation of front and side pose photograph of the arrestee. Inclusion of photograph would not only bring credibility to the *Arrest Memo* but would also come handy in the future proclamation proceedings, if any. Also, once included in the Data Bank of *National Crime Record Bureau* (NCRB), the photo can be used to identify the repeat offender with the help of latest software tools which use face recognition techniques like super imposition etc.

456. Inclusion of all mobiles and landline connections of the accused in the Arrest Memo – The Arrest Memo shall carry all mobile and landline numbers of the accused apart from such contact numbers of his/her parents, spouse or any other first-degree relation for future reference purposes. Availability of mobile phone number of the suspect/ arrested accused would come handy in establishing communication with him/her by the Investigating Agencies or the Courts.

457. Inclusion of all other particulars of Information Technology Communication tools like Email I.Ds, Facebook accounts, LinkedIn in accounts and Twitter accounts etc. of the accused in the Arrest Memo – Another improvement which can be brought into the modified Arrest Memo is inclusion of particulars of other new age modes of communications namely Email I.Ds., Facebook accounts, LinkedIn accounts, Twitter handles, etc. These days social media tools can be used for tracking and tracing an accused in case of any exigency akin to abscondance.

458. Inclusion of all the Bank Account particulars and Credit/Debit Cards particulars of the accused in the Arrest Memo – Include all the Bank Accounts particulars and Credit/Debit Cards particulars of the arrestee in the Arrest Memo. This would go a long way in tracking the accused if he absconds. Any usage or operation of Bank account or the Credit Card, when put under surveillance, would get registered and alarm the security agencies.

459. Execution of Section 82/83 CrPC processes to be done by an officer not below the rank of S.I., since it is now a cognizable

offence, under 174A IPC – Since abscondance and declaration as a *Proclaimed Person/Offender* has now become a cognizable and non-bailable offence, it is imperative that the execution of Sections 82 and 83 CrPC is done by an officer not below the rank of Sub-Inspector.

460. Mandatory photography and video recording of Section 82/83 CrPC proceedings and attachment of the video file with the prosecution material – Another tool which can add credence to the proclamation/service proceedings is Photography as well as Videography of the proclamation/service proceeding. This would rule out instances where it is found that execution police official has prepared the publication report without actually visiting the house of the accused. A series of photos and a video of the house of the accused during publication of the proclamation, will rule out the instances where accusations are made that no visit was paid by the execution officer at the address of the accused.

461. RWAs to keep track of floating population in their localities – The civil society be involved in tracking the floating population of their locality. Schemes like *Bhagidari* can be utilized for this propose. Residential Welfare Associations/Market Associations can keep track of floating population in their locality.

Guidelines for Early apprehension of Proclaimed Offenders/Proclaimed Persons

462. Recording of Certain Identifier Details of Accused – There is a need for accurate recording of certain identifier details of accused and suspects, especially in crimes of higher gravity, either when they

are joining investigation or attending courts for enabling effective tracing in case they become absconders or are declared *Proclaimed Persons/Offenders* at a later point in time. A suggestion on possible details that could be voluntarily received from them at a suitable stage either during investigation or while attending court to the extent possible include:

- (i) Good quality photographs from multiple axes.
- (ii) Fingerprints recorded digitally.
- (iii) Name, parentage, date of birth, native place and last known address
- (iv) Copies of Photo Identity documents like passport, EPIC card, proof of address etc.
- (v) Identification marks and general descriptors like height, prominent facial looks etc.
- (vi) Communication details: e-mail ID, mobile number, landline number etc.
- (vii) Social Media account details if any: Facebook, WhatsApp LinkedIn, Twitter etc
- (viii) Details of close family members and social acquaintances.
- (ix) Financial accounts details: Bank accounts, PAN card number etc.

463. *Making Public the name, details and pictures of Proclaimed Persons/ Offenders* – The names, addresses and pictures of the *Proclaimed Persons/Offenders* be made public on different government websites i.e. Delhi Police, NCRB, CBI and other States

Police. The data of the *Proclaimed Persons/Offenders* in cases involving the Delhi Police, as is already available on ZIPNET, should be made accessible to the public. Details of *Proclaimed Persons/Offenders* be also published on the website of the District Courts.

464. *Search Option for tracking Proclaimed Persons/Offenders* – Police websites shall carry a simple search box option where details of each *Proclaimed Persons/Offenders* can be ascertained by simply searching them with their names or other available particulars. This will enable even the citizens to arrest the *Proclaimed Persons/Offenders* under Section 43 CrPC.

465. *Publicly Searchable Standardized National Search Database of Proclaimed Persons/Offenders* – Availability of a publicly accessible database on *Proclaimed Persons/Offenders* which can be easily checked and searched by the general public can be very useful in eliciting public cooperation in receiving critical timely information on *Proclaimed Persons/Offenders*. The digital platform may have easy user-friendly online mechanism for public to give tip-offs or useful information on *Proclaimed Persons/Offenders* for assistance of law enforcement agencies.

466. *Digital Police Portal* – The “*Digital Police Portal*” launched by MHA in 2018 is connecting all CCTNS based services as well as different Apps for police are available on this single central portal. Details of *Proclaimed Persons/Offenders* are publicly accessible on this platform using the following link:

<http://www.digitalpolicecitizenservices.gov.in/centercitizen/login.ht>

[m;jsessionid=19854D38557AF143920E52F31BD78129](#)

467. The existing database may be made more easily accessible and provisions for public to give critical inputs or tip-offs using the digital platform may be considered. Further the database may be made available to Financial Intelligence Unit to develop suitable Red Flag Indicators to track financial transactions by *Proclaimed offenders* and provide Suspicious Transaction Reports that may help identify *Proclaimed Persons/Offenders*.

468. Digital Surveillance of Proclaimed Persons/Offenders – Delhi Police shall put in place a Digital Surveillance System whereby it shall be given a “*See only*” access to all Digital Data of the following departments to track the *Proclaimed Persons/Offenders*. Once given access, there are software which can as *Web Crawlers* search out the *Proclaimed Persons/Offenders* out of large data bases. The threat perception from these *Proclaimed Persons/Offenders* roaming around in Delhi fearlessly is immensely grave. The details of the departments are as under:

- (i) All Nationalized and Private Banks Saving Account Holders data
- (ii) All Nationalized and Private Banks Loan Account Holders data
- (iii) All Nationalized and Private Banks Credit Cards Holders Data
- (iv) All PAN Card holders Data
- (v) All MTNL / Private Landline holders Data
- (vi) All MTNL / Private Mobile Holders Data
- (vii) All Passport Holders Data

- (viii) All Govt. and Private Insurance Holders Data
- (ix) All Aadhaar Card holders Data
- (x) All Voter cards holders data
- (xi) Transport Department, Driving Licence and Vehicle Registration Data
- (xii) Registrar of Death Registration Data

469. Following Financial Transactions of Proclaimed Persons/Offenders – With increase in reliance on electronic commerce, e-banking and payment gateways, it's become all the more important to identify financial trails of *Proclaimed Persons/Offenders* and the clues generated from such analysis of financial trails with close contacts can be critical in tracing of *Proclaimed Persons/Offenders*. The use of database of *Proclaimed Persons/Offenders* by FIU-IND to consider incorporation of suitable RFIs (Red Flag Indicators) may help with identification of financial trails of *Proclaimed Persons/Offenders*.

470. Keep vigil on Social Media and Websites – The Digital Surveillance Team of Delhi Police and CBI shall also keep vigil on social media and websites like *Facebook, WhatsApp, LinkedIn* and *Twitter* etc. for searching the accused/*Proclaimed Persons/Offenders* with enhanced technological tools. The accused/*Proclaimed Persons/Offenders* can even be tracked by their photographs.

471. All Police Stations to prominently display the names and pictures of the Proclaimed Persons/Offenders – All the Police Stations shall prominently display the names and pictures of the

Proclaimed Persons/Offenders to make public aware and report the matter to the police or arrest the *Proclaimed Persons/Offenders*.

472. Display a list of Proclaimed Persons and Offenders at a conspicuous in the police station – The SHO concerned shall ensure that a list of all *Proclaimed Persons and Offenders* who are absconding, in cases registered in their concerned police station is displayed on the notice board in the police station.

473. Use of Bharat Map of NIC to flag addressees of Proclaimed Persons and Offenders – Creation of the 3D map of all the Police Stations areas in Delhi with licensed or open source Google maps type mapping with the help of National Informatics Centre (NIC) which will have a real time pop-up display of all the *Proclaimed Persons and Offenders*, convicts and other accused in a locality. The pop-up shall display the image, name, address and other details in mobile/tab/pad device or laptop or desktop for usage by Police, Intelligence agencies and Judiciary only.

474. Assigning unique digital IDs to pre-verified addresses – On the lines of PIN codes allotted by Postal Department to the entire length and breadth of our nation whereby a particular six digit PIN Code identifies a fixed area, this methodology can be further used to award a Unique Address Code (UAC) whereby with the help of Postal Department and Municipal Corporations having the house records, pre-verified six digit unique code for each address can be created. This code can be used by the police as well as by the Judiciary for cross checking of the address for verification purposes at the time of arrest/surrender and acceptance of bonds.

475. Linking police promotions/rewards to the arrest of Proclaimed Persons/Offenders – Linking police promotions/rewards to the arrest of *Proclaimed Persons and Offenders* would motivate the police officers to arrest the proclaimed offenders.

476. Central data base of Proclaimed Persons and Offenders – A central data base of the proclaimed offenders be prepared similar to the Crime and Criminal Tracking Network & System (CCTNS) for sharing information between the state police with respect to the *Proclaimed Persons/Offenders*.

477. If accused is suspected to be abroad/suspected to flee from the country – If accused is suspected to be abroad, a Red Corner Notice may be issued from INTERPOL against him or if the accused is suspected to flee from the country, Look Out Notice/Circular be also issued.

478. Use of INTERPOL channels if Proclaimed offender is suspected to be abroad – The Investigating Agency through the INTERPOL Liaison Officer contact National Central Bureau-New Delhi, CBI requesting issue of suitable INTERPOL Notice through IPSPG for locating or tracing the *Proclaimed Person/Offender* abroad. In the modern technology era it has become very important for investigators to effectively utilize the digital footprints of *Proclaimed Persons/Offenders* to trace them. Investigators need to proactively look for leads and clues in social media, electronic communication platforms and open source information to search for *Proclaimed Persons/Offenders*.

479. Issuance of Look Out Circulars where the accused has left the country – Ministry of Home Affairs, Foreigners Division (Immigration Section) vide letter No.25016/10/2017-Imm.(Pt.) dated 22nd February, 2021 has issued detailed guidelines regarding issuance of LOCs for alerting all Immigration Check Points (ICP). Issue of Look Out Circulars in a timely manner can prevent escape of *Proclaimed Persons/Offenders* to foreign jurisdictions.

480. Impounding or Revocation of Passport as per The Passports Act, 1967 section 10(3)(h) – Steps should be initiated for impounding or revocation of passport of the *Proclaimed Person/Offender*. In the absence of impounding or revocation of passports, the *Proclaimed Person/Offender* would be at liberty to travel freely in international jurisdictions. Taking expeditious steps in this regard shall be a key step in curtailing scope for international movements of *Proclaimed Person/Offender*.

481. Restriction on issuing passports to those who are absconding – The Ministry of External Affairs shall not issue passport facilities to the absconding accused. The passport of such accused should be revoked under Sections 6 and 10 of the Passport Act, 1967.

482. Creation of a dedicated website containing particulars of all persons arrested or bailed in criminal offences – Our country is a world leader in software and hardware development. We can use the information technological tools by creating a database of all arrested criminals and also all those who are facing criminal prosecutions. This would not only be handy and easily accessible to all concerned specially security agencies but will also act as deterrence to the

potential absconders. Such a data base can even be made accessible to the public so that the same can be used to verify the criminal antecedents or credentials of a person through a simple search process by private parties. Such a data bank can also help identify repeat offenders and serial offenders and can be an effective tool in efficient handling of crime.

483. Creation of a dedicated website for all persons against whom proclamation issued or who are declared Proclaimed Person/Offender – Likewise we can also use the IT tools by creating a database and a dedicated website of all absconders and *Proclaimed Persons/Offenders*. This would go a long way in bringing in discipline in criminal trials. Access to this tool would help in speedy trial of justice and help tracking the absconders. As of now there is no sure short mechanism whereby list of absconders or *Proclaimed Persons/Offenders* of a particular state can be easily accessed by police force from other States and Nations. Having a state-wise data bank apart from a national data bank of such absconders/ *Proclaimed Person/Offender* would help all stake holders in tracking such persons and bringing them to justice. Even otherwise, abscondance is a public information and as per law, an absconder/ *Proclaimed Person/Offender* can be arrested even by non-police, that is, a common citizen.

484. Launching of a Composite Proclaimed Persons and Offenders Website – There is an urgent need to create a dedicated website which contains data of all the details of *Proclaimed Person* and *Proclaimed Offenders/ Absconders* of each State / Union Territory in

a consolidated way with details of the crime, address etc. It may also be integrated with the aforementioned CCTNS so that the efforts to trace *Proclaimed Persons/Offenders* are not only in States where the accused declared *Proclaimed Persons/Offenders* but also in the entire Nation and even the world.

485. Interlinking of governmental / institutional databases for instant real time verification – Evidently at the time of arrest, accused furnishes his/her permanent / temporary / work place address supported by identity documents like passport, Aadhaar Card, Driving License and like. Such documents are also furnished by the surety at the time of submitting Section 441 CrPC Surety Bond before the SHO / MM / Trial Court. There is a need to interlink the governmental / institutional databases with the help of Application Programme Interface (API) with CCTNS of Police and CIS of judiciary for instant verification of documents furnished in the course of investigation / trial. Such exercise has already been carried out and tested in at least three projects out of which one is eDAR National Dashboard.

- eDAR National Dashboard – Under the aegis of Artificial Intelligence Committee of Supreme Court, a decision was arrived at to use AI Tool SUPACE (Supreme Court Portal for Assistance in Court Efficiency) in various legal fields like criminal appeals, income tax matters, land acquisition cases, Negotiable Instruments Act complaints, and Motor Accident Claims. The eDAR Dashboard is developed in such a way that it seamlessly exchanges data with CCTNS of MHA, *Vahan/Saarathi* of MoRTH

and IIBI of IRDA and would eventually be able to push eDAR to the Case Information System, CIS 3.2 of Judiciary. This networking will help instant verification of documents thereby saving thousands of man hours currently being utilised in verification of documents like DL / RC from other states.

486. Governmental/Institutional Databases may be interlinked with CCTNS/CIS – e-Governance Mission Mode Project of Government of India mandated all Ministries, Departments and Public Sector Undertakings to digitize their data and day-to-day working. Taking advantage of this digital revolution, in order to tackle the menace of accused/suspect absconding during the investigation/trial, there is need to interlink the criminal justice system with the available governmental/institutional databases. Lack of comprehensive cohesive initiative in this regard has led to spiralling of crime in the city state of New Delhi. Doubling of number of *Proclaimed Persons* from 13,521 as in March 2010 which has now reached more than 28,000 in the year 2021. The databases which can be interlinked with CCTNS of Police and CIS of judiciary include VAHAN, SARATHI of MoRTH; Aadhaar; Bank Accounts; Land records; Mobile Phone records; Passport; Insurance; Income Tax and like.

487. Creation of a dedicated Cell for Tracking and Arresting Proclaimed Persons/Offenders – Considering the fact that in the last around 10 years the number of *Proclaimed Persons* in Delhi has swelled to double from 13,500 in 2010 to 28,000+ in 2021, there is a need to create a dedicated cell for digital tracking and arrest of these *Proclaimed Persons/Offenders*. Such cells in other States and UTs

can exchange real-time data to contain these outlaws. This will help restore law and order and will bring down spiralling crime.

488. Cases in which Evidence should be recorded in terms of Section 299 CrPC – In all cases in which an accused is absconding, except those of exceedingly trivial or petty nature or where special circumstances exist which make the procedure unnecessary or undesirable, the Court may consider recording evidence against the absconded offender under section 299 CrPC.

489. Mandatory to record reasons for proceeding under Section 299 CrPC – In order to render evidence recorded under section 299 CrPC admissible at future trial, it must be proved and put on record that the offender has absconded and that there is no immediate prospect of arresting him.

490. Invocation of Section 299 CrPC in case there are more than one accused – In cases where some of the accused are absconding and some are facing trial in the Court the evidence should first be produced to prove that these persons are absconding and that there was no immediate prospect of arresting them. The evidence of the witnesses should thereafter be recorded in the case against those present. Such evidence would be relevant against the absconders under section 299 CrPC, according to which on the arrest of the absconding accused, the deposition of the witnesses recorded in his absence may be given in evidence against him if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay or inconvenience which, under the circumstances of the case would be

unreasonable. The last ground can easily be cited where a large number of prosecution witnesses have been examined in the absence of the absconding accused.

Conclusion

491. The law with respect to the declaration of a person as a *Proclaimed Person/Offender* is well settled. This Court has laid down the Guidelines to be followed by the Courts before declaring a person as a *Proclaimed Person/ Offender*. The Courts shall consider the Guidelines before declaring a person as a *Proclaimed Person/Offender*.

492. The Court, after declaring the person as a *Proclaimed Person/Offender*, shall direct the Police to trace and identify the movable and immovable properties of the *Proclaimed Person/Offender* and file the status report with respect to the assets of the *Proclaimed Person/Offender*. The Court shall thereafter proceed to attach the movable and immovable properties of the *Proclaimed Person/Offender* in accordance with the law.

493. After the declaration of a person as a *Proclaimed Person/Offender*, the Police is required to trace the *Proclaimed Person/Offender* and arrest him. This Court has laid down the Guidelines for early apprehension of the *Proclaimed Persons/Offenders*. The Court declaring a person as a *Proclaimed Person/Offender* shall direct the Police to take all necessary action for tracing the *Proclaimed Person/Offender* and file the Status Report with respect to the action taken by the Police.

494. All the Courts below are directed not to close the matter after declaring a person as a Proclaimed Person/Offender. Rather, the Courts shall direct the police to file the Status Report with respect to the efforts made to trace the Proclaimed Persons/Offenders; efforts made to trace or attach their movable/ immovable assets/properties and their prosecution in accordance with law. The concerned Courts shall monitor the action taken by the Police and shall issue such fresh directions as may be considered necessary. The Court may, in appropriate cases, record the evidence of the witnesses under Section 299 CrPC.

495. Although no time period is prescribed for prosecution of the *Proclaimed Persons/Offender*, this Court is of the view that the Proclaimed Offender be prosecuted under Section 174A IPC, if the *Proclaimed Person/Offender* does not surrender or is not traced out within a period of six months of being declared as a *Proclaimed Person/Offender*. If the accused has also violated the condition(s) of bail bond by non-appearance in Court, the accused be also prosecuted under Section 229A IPC.

496. All the Courts below shall send a quarterly compliance Report to the Registrar General. The Compliance Report shall give the number of *Proclaimed Persons/Offenders* declared by the Court; number of cases in which *Proclaimed Persons/Offenders* have been traced/arrested; number of cases in which assets of *Proclaimed Persons/Offenders* have been attached; and number of cases in which the accused have been prosecuted under Section 174A and/or under Section 229A IPC, as applicable and number of cases in which

evidence has been recorded in Section 299 CrPC. In the event of non-compliance, the Registrar General shall place the Report before the ACR Committee of the Judicial Officer.

497. As per the status report of Delhi Police, there were 26,532 *Proclaimed Persons* and 3,826 *Proclaimed Offenders* as on 31st September, 2019. This number is increasing day by day as no concrete steps have been taken to trace the *Proclaimed Persons/Offenders*; and to attach their assets and to prosecute them. There appears to be the tendency of the Court as well as the Police to close the matter after the person is declared as a *Proclaimed Person/Offender* and the file is consigned to Record Room. This is a serious lapse considering that the criminal law which sets into motion with the filing of an FIR, comes to an abrupt end which is against the most basic tenets of justice and causes an irreparable injury to the entire society including victims.

498. Delhi Police as well as CBI shall create a Special Cell for tracing out the *Proclaimed Persons/Offenders*; for attaching their movable/immovable properties and for their prosecution. Delhi Police as well as CBI are at liberty to have a consolidated Special Cell. This Special Cell be created within a period of four weeks.

499. This Court is of the view that it would be appropriate and in the interest of justice to constitute a High-Powered Committee to supervise the implementation of Guidelines laid down by this Court relating to the *Proclaimed Persons/Offenders*. In view of the above,

a Committee is hereby constituted comprising of the following members:

- (i) Joint Secretary to be nominated by the Secretary, Ministry of Home Affairs.
- (ii) Principal Secretary (Law), Department of Law, Justice & Legislative Affairs, Government of NCT Delhi.
- (iii) Special Commissioner of Delhi Police to be nominated by Commissioner of Police.
- (iv) Additional Director of CBI to be nominated by Director, CBI.
- (v) Joint Director (CCTNS) to be nominated by Director General of Bureau of Police Research & Development (BPR&D).
- (vi) Mr. Surinder S. Rathi, Officer of DHJS presently posted as Registrar and OSD to Hon'ble the Chief Justice of Delhi High Court, as a Convenor.
- (vii) Mr. Kanwal Jeet Arora, Officer of DHJS presently posted as Member Secretary, DSLSA.
- (viii) Mr. Shashikant Sharma, HOD, Inter-operable Criminal Justice System (ICJS), NIC.
- (ix) Mr. Nikhil Goel, Standing Counsel for CBI.
- (x) Mr. Sanjal Lao, Standing Counsel for Delhi Police.

500. The constitution of the Committee shall be appropriately notified by the Ministry of Home Affairs, Government of India within four weeks along with provisioning of necessary secretarial assistance.

501. This Court has issued various guidelines for early apprehension of the *Proclaimed Persons/Offenders*. All the Guidelines are important and need to be implemented. However, if all the Guidelines cannot be implemented immediately, the same may be implemented in a phased manner under the supervision of the above Committee.

502. The Committee shall convene the first meeting within four weeks and shall, after hearing the Delhi Police and CBI, decide which Guidelines can be implemented immediately. The Committee shall thereafter meet at least once a month for implementation of the remaining guidelines in a phased manner. The Committee shall ensure that all the Guidelines are implemented in a phased manner within a period of eight months to one year.

503. The Committee shall also consider *Unified Criminal Justice System, Research Paper* filed by Mr. Surinder S. Rathi which contains valuable innovative suggestions for bringing in the much desired efficiency in the *Criminal Justice System* through intelligent digitization.

504. The Committee shall supervise the implementation of the Guidelines issued by this Court to be followed by Delhi Police as well as CBI. Delhi Police as well as CBI shall file the quarterly Status Report before the Committee giving the list of the *Proclaimed Persons/Offenders*, efforts made to trace out the *Proclaimed Persons/Offenders*, efforts made to trace and attach the movable and immovable properties of the *Proclaimed Persons/Offenders* and the prosecution under Sections 174A and 229A IPC. The first compliance report for the quarter 01st August, 2021 to 31st October, 2021 be filed by 15th November, 2021 and thereafter by 15th of each quarter. The same be considered by the Committee within four weeks thereafter. The Committee shall, after considering the compliance reports, issue fresh directions as may be considered necessary to implement the Guidelines.

505. In *Hussain v. Union of India*, (2017) 5 SCC 702, the Supreme Court noted that the trials were getting delayed on account of absconding of one or the other accused during the trial. The Supreme Court noted Section 339-B of the Code of Criminal Procedure, 1898 of Bangladesh which permitted trial *in absentia*. The Supreme Court recommended similar amendment of CrPC to reduce the delay due to the absconding of the accused during the trial. The Central Government shall consider the same within eight weeks. Relevant portion of the said judgment is reproduced hereunder:

“23. Another suggestion which cropped up during the hearing of the present case relates to remedying the situation of delay in trials on account of absconding of one or the other accused during the trial. In this regard our attention has been drawn to an amendment in the Code of Criminal Procedure, 1898 of Bangladesh by way of adding Section 339-B to the following effect:

“339-B. Trial in absentia.—(1) Where after the compliance with the requirements of Section 87 and Section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.

(2) Where in a case after the production or appearance of an accused before the Court or his

release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.”

24. It is for the authority concerned to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial.”

(Emphasis supplied)

506. This Court appreciates the exemplary work done by the Internal Committees of CBI as well as Delhi Police in terms of the directions issued by this Court on 07th January, 2021.

507. This Court appreciates the valuable and effective assistance rendered by Mr. Surinder S. Rathi, OSD-cum- Registrar to Hon'ble Chief Justice of High Court of Delhi, Mr. Nikhil Goel, Standing Counsel for CBI, Ms. Nandita Rao, Additional Standing Counsel for GNCTD, Mr. Dayan Krishnan, Senior Advocate, Mr. N. Hariharan, Senior Advocate, Mr. Vikas Pahwa, Senior Advocate; Mr. Rajshekhar Rao, Senior Advocate, Dr. L.S. Chaudhary, Advocate, Mr. Rajiv K. Garg, Advocate, and Prof. (Dr.) G.S. Bajpai, Vice Chancellor, NLU Patiala and former Professor of Criminology and Criminal Justice, National Law University, Delhi, Mr. Akshay Chowdhary and Ms. Anjali Agrawal, Law Researchers attached to this Court.

508. These petitions are disposed of. It is clarified that these cases have already been decided on merits.

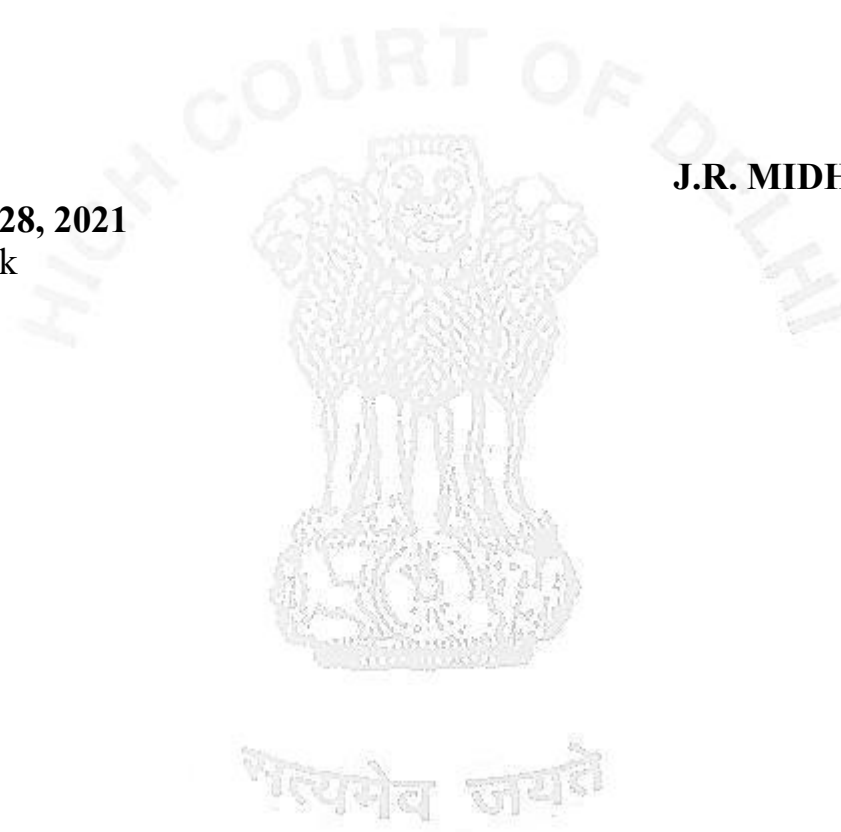
509. Copy of this judgment be sent to the District Judges who shall circulate it to all the concerned Courts.

510. Copy of this judgment be sent to Delhi Judicial Academy to sensitise the judges about these Guidelines.

511. Delhi Judicial Academy shall upload this judgment on their website (<http://judicialacademy.nic.in>) as good practices of this Court.

JUNE 28, 2021
ak/ds/dk

J.R. MIDHA, J.



Annexure A

**PROFORMA OF DETAILS TO BE COLLECTED DURING
INVESTIGATION**

GENERAL INFORMATION

Sr. No.: _____

FIR/DD No.: _____

Police Station: _____

DETAILS OF INVESTIGATING OFFICER:

Name: _____

Rank: _____

Police Station: _____

DETAILS OF THE ACCUSED

Name	
Complete Residential address	
Complete Permanent address	
Age	
Contact No.(s)	
Details of Family Member(s) and respective Contact No. (s)	
Occupational details	

DETAILS OF PROOF OF IDENTIFICATION/PLACE OF RESIDENCE

Type of Document	Number of Document	Whether photocopy attached
Driving Licence		Yes / No
Aadhaar Card		Yes / No
PAN Card		Yes / No
Voter ID		Yes / No
Passport		Yes / No
Ration Card		Yes / No
Bank Passbook		Yes / No
Telephone Bill		Yes / No
Electricity Bill		Yes / No

ELECTRONIC MEDIA DETAILS OF THE ACCUSED

E- mail ID	
Facebook ID and associated email	
Twitter ID and associated email	
LinkedIn ID and associated email	
WhatsApp Number	
Any other social media account and its relevant details	

Annexure B

**PROFORMA OF DETAILS TO BE FURNISHED BY THE
ACCUSED AT THE TIME OF BAIL**

Sr. No.: _____
FIR/DD/Case No.: _____
Police Station/Court: _____

I, _____ (name) resident of _____ (place) having been arrested or detained without warrant by the officer in charge of _____ police station (or having been brought before the Court of _____) charged with the offence of _____ and required to give security for my attendance before such officer or Court on condition that I shall attend such officer or Court on every day on which any trial is held with regard to such charge, and in case of my making default herein, or being absconded or concealed myself and I fail to appear at a specific place and at a specified time, I bind myself to get my property/properties, as mentioned herein, attached by the Court. I further bind myself to disclose any change in my residential address/permanent address/ phone number/ mobile number/ other contact details to the officer in charge of _____ police station/Court.

Date.....

DETAILS OF THE ACCUSED

Name	
Complete Residential address	
Complete Permanent address	
Age	
Contact No.(s)	
Details of Family Member(s) and	

respective Contact No. (s)	
Occupational details	

DETAILS OF PROOF OF IDENTIFICATION/PLACE OF RESIDENCE

Type of Document	Details of Document	Whether photocopy attached
Driving Licence		Yes / No
Aadhaar Card		Yes / No
PAN Card		Yes / No
Voter ID		Yes / No
Passport		Yes / No
Ration Card		Yes / No
Bank Passbook		Yes / No
Telephone Bill		Yes / No
Electricity Bill		Yes / No

ELECTRONIC DETAILS OF THE ACCUSED

E- mail ID	
Facebook ID and registered email ID	
Twitter ID and registered email ID	
LinkedIn ID and registered email ID	
WhatsApp Number	
Any other social media account and its relevant details	

Annexure C

PROFORMA OF DETAILS REGARDING PUBLICATION
UNDER SECTION 82 CrPC

Sr. No.: _____

FIR/DD/Case No.: _____

Police Station/Court: _____

DETAILS OF THE OFFICER ENTRUSTED WITH PUBLICATION

Name	
Designation	
Contact No.(s)	

DETAILS OF PERSON AGAINST WHOME PROCLAMATION IS TO BE PUBLISHED

Name	
Complete Residential address	
Complete Permanent address	
Contact No.(s)	
Details of Family Member(s) and respective Contact No. (s)	

DETAILS OF THE PROCESS

S.No.	DETAIL	RESPONSE
1.	Whether the proclamation was read out in a conspicuous place of the town or village in which the person resides? If not, give reasons.	Yes / No _____ _____ _____
2.	Whether the reading out of the proclamation was recorded on video? If not, give reasons.	Yes / No _____ _____ _____
3.	Whether the video of the reading out of the proclamation is attached with the form? If not, give reasons.	Yes / No _____ _____ _____
4.	Whether the house or homestead in which the person resides could be identified? If not, give reasons.	Yes / No _____ _____ _____
5.	Whether the house or homestead in which the person resides was photographed? If not, give reasons.	Yes / No _____ _____ _____
6.	Whether the photograph of the house or homestead in which the person resides, is attached with this form? If not, give reasons.	Yes / No _____ _____ _____
7.	Whether the proclamation was affixed to a conspicuous part of the house or homestead in which the person resides? If not, give reasons.	Yes / No _____ _____ _____
8.	Whether the proclamation affixed to a conspicuous part of the house or homestead in which the person resides, was photographed? If not, give reasons.	Yes / No _____ _____ _____

9	Whether the photograph of the proclamation affixed to a conspicuous part of the house or homestead in which the person resides, is attached with this form? If not, give reasons.	Yes / No <hr/> <hr/> <hr/>
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