

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

**CRM-M-35090 of 2015
DECIDED ON: AUGUST 05, 2016**

HARJINDER SINGH & ANR

.....PETITIONERS

VERSUS

STATE OF PUNJAB & ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Tarundeep Kumar, Advocate for
 Mr. D.S. Pheruman, Advocate
 for the petitioners.

Mr. RPS Sidhu, AAG, Punjab.

Mr. Ashish Aggarwal, Advocate
for respondent No.2.

JASPAL SINGH, J (ORAL)

Petitioners have approached this court by way of instant petition preferred under Section 438 Cr.P.C. seeking pre-arrest bail in a criminal complaint case bearing No. 12967 dated 23.07.2012, under Section 138 of Negotiable Instruments Act, 1881 (for short 'Act'), which is pending disposal in the Court of Judicial Magistrate Ist Class, Amritsar.

The contention of learned counsel for the petitioners is that on September 23, 2014, an application was moved by the petitioners through their counsel seeking exemption of their personal appearance, as they have gone to

Chandigarh to file a revision petition but their application was dismissed by learned trial Court and their bail bonds were cancelled/forfeited to the State. Since, the proceedings before the trial Court were stayed by this Court and thus, no proceedings were pending before trial Court except their appearance. However, by virtue of forfeiture of their bail bonds, they have been summoned through non-bailable warrants of arrest. In fact, criminal complaint pending before the learned Magistrate was to be tried as a summary case. Thus, personal appearance of the accused can otherwise be exempted under Section 317 Cr.P.C. Even otherwise, no proceedings could have been taken during the operation of order December 11, 2014. Moreover, the personal appearance of the petitioners has been declined by learned trial Court without any rhyme and reason. Petitioners are also ready to join the proceedings before learned trial Court in case they are granted the concession of pre-arrest bail.

On the other hand, learned State counsel as well as counsel for respondent No.2 strongly opposed the instant petition submitting that the petitioners have misused the concession of interim bail granted to them who did not co-operate with the trial Court. It was only due to the said reason, their bail bonds were cancelled and forfeited to the State. Moreover, after the issuance of non-bailable warrants to the petitioners, they are still at large and have not opted to join the proceedings. Thus, they are not entitled to the discretionary relief of pre-arrest bail.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties but do not find any legal and factual force in the contentions put forth by learned counsel for the petitioners.

Instant case is a glaring example of flagrant misuse of process of

law and non cooperative attitude of the petitioners, who have approached this Court for grant of pre-arrest bail, which clearly reflects from the proceedings. Admittedly, petitioners are facing trial in a complaint case under Section 138 of the Act and during the pendency thereof, firstly they moved an application seeking exemption from their personal appearance on the ground that they had gone to Chandigarh to file a revision petition against the order dated September 22, 2014 whereby, an application under Section 311 Cr.P.C. moved by the petitioner was dismissed but on that day the learned trial Court exempted their personal appearance only for that day. But at that time, the arguments were partly heard on behalf of the complainant and learned counsel for the accused was asked to argue the case, as it was to be disposed of within a prescribed period fixed by this Court and i.e. upto September 23, 2014 but he did not address the arguments. Accordingly, the case was listed for the next date i.e. September 23, 2014 for pronouncing the final judgment. However, learned counsel for the accused were provided the time to address the arguments before lunch on September 23, 2014. It was also made clear that no exemption application shall be entertained but without caring for the said order, they absented from the proceedings before trial Court on September 23, 2014 in utter disregard of the specific directions. Consequently, they were ordered to be summoned through non-bailable warrants of arrest. Even, despite issuance of warrants, they did not appear. Ultimately, they were declared proclaimed person/offender vide order dated November 10, 2014 by learned trial Court.

Here, it would be pertinent to mention that the contention of learned counsel for the petitioners that stay order was operative on the date when non-bailable warrants of the petitioners were issued, is misconceived.

Rather, it can be said that the order whereby, learned trial Court was directed to dispose of the case within a time bound manner i.e. upto September 23, 2014 was not brought to the notice of this Court. The order staying the proceedings before learned trial Court was passed on December 11, 2014 meaning thereby, that no order of stay was in operation when the non-bailable warrants were issued and the petitioners were declared proclaimed persons/offender.

In the given circumstances, it could not be said that the absence of the petitioners before learned trial Court was unintentional. It would also be apt and proper to reproduce the order dated September 23, 2014 passed by learned trial Court, which reads as under:

“Case called several times since morning but neither accused nor their counsel nor any other person on their behalf appeared in Court. Now, file be taken up after lunch time.”

“At this stage, counsel for accused has appeared in the court and moved application for exemption from personal appearance of both the accused on the ground that accused have gone to Chandigarh to file revision petition against the order of application u/s 311 Cr.P.C. On the last date i.e. 22.09.2014, it was made clear to the counsel for accused that present case is time bound case by Hon'ble Punjab and Haryana High Court and the last for disposing off the same is 23.09.2014. It was also made clear that no application for exemption from personal appearance of accused shall be entertained as the final orders are to be pronounced on 23.09.2014. Despite clear cut direction, counsel for accused has come up with the application for exemption from personal appearance of both the accused due to which the present case cannot be decided in the absence of accused. Since the accused have not complied with the specific direction, as such, the bail of both the accused is cancelled. This bail bonds/surety bonds are cancelled and forfeited to State. Non bailable warrants of arrest of

both the accused be issued returnable for 4.10.2014. Notice to their surety be also issued for the date fixed.

As the present case is time bound case as directed by Hon'ble Punjab and Haryana High Court and today is the last date for disposal of the same. However, in the present circumstances, this Court is unable to dispose off the case today. As such, separate letter be written to Hon'ble Punjab and Haryana High Court, Chandigarh, praying for extension of time for disposing off the case."

Taking into consideration the above narrated facts and circumstances, this Court is of the considered view that the exemption application moved on September 23, 2014 was rightly declined by the trial Court. Moreover, since that day petitioners are absent from trial Court and are at large. Such persons do not deserve any leniency in the matter of pre-arrest bail.

Accordingly, instant petition stands dismissed.

AUGUST 05, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No