

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

**CRM-M-2031-2018
Date of decision:-29.1.2018**

Rahul Dhawan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Kamal K. Chaudhary, Advocate
for the petitioner.

H.S. MADAAN, J.

Complainant Arvind Kumar had brought a complaint under Section 138 of the Negotiable Instruments Act against Rahul Dhawan and vide judgment dated 27.10.2017, Judicial Magistrate Ist Class, Faridabad, convicted accused under Section 138 of Negotiable Instruments Act, whereas vide order dated 28.10.2017, accused/convict was sentenced to undergo simple imprisonment for a period of three months and to pay compensation to the tune of Rs.3,75,000/-.

Feeling aggrieved, accused/convict had filed an appeal, which came up for hearing before learned Sessions Judge, Faridabad, who while disposing of an application for suspending the sentence and allowing bail to appellant/convict till disposal of the appeal, in para No.8 of the order dated 22.11.2017 observed as under:

In the present case, the amount of the dishonoured cheques is ₹2,50,000/-, although the learned trial Court has directed appellant to pay compensation amount of ₹3,75,000/-. Appellant is admitted to bail on furnishing bail bond in the sum of ₹50,000/- with a surety in the like amount to the satisfaction of this Court; with the further condition that he shall either furnish bank draft in favour of the complainant for an amount of ₹1,25,000/- (i.e. half of the cheque amount); or the bank guarantee to the extent of ₹1,25,000/- within 15 days from today. If the draft is furnished by him, it shall be retained on the Court file. In case appeal is ultimately accepted, the draft shall be returned to the appellant and if the appeal is dismissed, the draft shall be given to the complainant-respondent to be adjusted in the compensation amount. If the bank guarantee is furnished, the same shall be cancelled in case appeal is accepted; whereas in case the appeal is dismissed, the bank guarantee shall be utilized for making payment to the complainant. Ordered accordingly.

In this very order, the contention of learned counsel for the appellant that grant of bail under Section 389 (3) Cr.P.C. is a constitutional and legal right of accused/appellant and no condition can be imposed has been considered and authorities referred to him on that point i.e. **Kedar Nath Versus State of Haryana 2006 (4) RCR (Criminal) 582 (P&H)** and **Dalip S. Dahanukar Versus Kotak**

Mahindra Co. Ltd. 2007 (2) RCR (Criminal) 636 have been considered, however, observations made by the Apex Court in **Dalip S. Dahanukar's** case have been reproduced in support of the contention that Appellate Court can suspend the sentence and can put the appellant on terms. The relevant part of the order in that regard is reproduced as under:

*In **Rajnikant Nathalal Maniar Vs. Jagdish Jasvantlal Patwa & others 2017 (2) RCR (Criminal) 180 (Gujarat)**, while filing the appeal against the conviction in a case under Section 138 of the Negotiable Instruments Act, contention was raised that it is the constitutional and legal right of the accused as provided in the statute and so, he is entitled to be released on bail. It was also contented that no condition could be imposed while granting the bail. Reliance was placed to **Dalip S. Dahanukar's case (supra)**. Hon'ble Gujarat High Court after referring to the catena of authorities including **Dalip S. Dahanukar's case**, held that it is reasonable to impose condition at the time of order for passing suspension of sentence, whereas pursuant to the observations made in the case of **Dalip S. Dahanukar's case**, at the most Court has to see that such condition should not be harsh to the extent that the petitioner may not be released on bail at all for non-compliance of such condition. The Hon'ble High Court held that except that, it cannot be said that no condition whatsoever can be imposed or that imposition of condition*

is illegal.

On that day, personal bond had been furnished by the appellant. Appeal was admitted and appellant had been directed to furnish surety bond on 24.11.2017 and for furnishing bank guarantee/draft, the case was adjourned for 7.12.2017. On 7.12.2017, the appellant had not put in appearance and on an application having been filed on his behalf for exemption of his personal appearance for the reason that his wife was hospitalized, the same was allowed noticing that the appellant had not furnished the bank guarantee/demand draft and had not complied with the order. He was directed to do so for the next date fixed as 8.12.2017. On 8.12.2017, the appellant had not put in appearance despite the case being called several times. He had not complied with the conditions of the bail order dated 22.11.2017, as such his bail was cancelled and bonds were forfeited to the State and warrants of arrest against him were ordered to be issued with notice to the surety for 7.2.2018.

Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition.

I have heard learned counsel for the petitioner besides going through the record and I do not find any illegality or infirmity with the impugned order, which might have called for interference by this Court by way of exercising jurisdiction under Section 482 Cr.P.C. The impugned order is well reasoned one and the law on the subject was discussed and then keeping in view the cheque amount to be in the sum of Rs.2,50,000/- and compensation awarded by the trial Court being

3,75,000/-, the appellant was given option either to bring bank draft in favour of the complainant for Rs.1,25,000/- i.e. half of the cheque amount, or bank guarantee to that extent. Such terms and conditions can certainly be not termed as harsh. Furthermore, the absence from the Court of appellant without any intimation on 8.12.2017 can certainly be not justified by any stretch of imagination.

The petition being without merit stands dismissed accordingly.

29.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No