

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

CRM-M-39726-2018 (O&M)

Date of Decision:-13.9.2018

Pardeep Kumar

... Petitioner

Versus

Anukriti Leasing & Exports (P) Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amandeep Rana, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

Normally, while granting bail, a notice is issued to the opposite party. However, in the present case, this Court does not feel the necessity of issuing notice *inter alia* on the ground that the present case arises out of a commercial transaction, wherein the petitioner had earlier put in appearance in complaint under Section 138 Negotiable Instruments Act, 1881 but subsequently non-bailable warrants were issued on account of his absence on one of the dates. Issuance of non-bailable warrants in a case under Section 138 of Negotiable Instruments Act, 1881 would not, *ipso-facto* result in vesting of any right in the complainant so as to afford him an opportunity of hearing for opposing this petition. Further in view of the facts and circumstances detailed below, issuance of a notice would not serve any purpose and would rather entail burden on the complainant, who may have to come here and engage a counsel to oppose the petition.

The facts, in nutshell, are that a complaint was filed by respondent-M/s Anukriti Leasing & Exports (P) Ltd. against the petitioner pertaining to dishonour of a cheque for an amount of ₹ 2.5 lacs. The petitioner had been granted bail and had been appearing before the trial Court. The gist of some of zimni orders passed prior to cancellation of the bail on 31.7.2018 may be stated as follows:-

“14.5.2018:- Upon a request made by the parties for adjournment on the ground that there are chances of compromise, the matter was adjourned to 1.6.2018.

1.6.2018:- One witness of complainant examined and matter was adjourned to 6.7.2018.

6.7.2018:- Exemption application moved on behalf of the accused/petitioner, was accepted and matter was adjourned to 16.7.2018.

16.7.2018:- Both the counsel again represented that there are chances of a compromise and had requested for an adjournment and thus the matter was adjourned to 19.7.2018.

19.7.2018:- Since the Presiding Officer was availing leave, the matter was put up before the Duty Magistrate, who simply adjourned the matter to 31.7.2018.

31.7.2018:- Since the accused failed to appear in the Court, his bail/bail bond was cancelled and the matter was adjourned to 30.8.2018.

30.8.2018:- An application was filed on behalf of the petitioner in terms of provisions of Section 70(2) Cr.P.C. seeking cancellation of non-bailable warrants, which had not been received back, which was declined and proclamation under Section 82 Cr.P.C. was ordered to be issued for 29.9.2018.”

Upon perusal of the aforesaid zimni orders it is reflected that on 19.7.2018, when the Presiding Officer was availing leave, the matter had been put up before the Duty Magistrate and the same was adjourned to 31.7.2018. The aforesaid order dated 19.7.2018 (Annexure P-5), however, indicates that neither the complainant nor the accused were present as their presence is not recorded and it is simply stated present ‘none’. The said fact would tend to indicate that perhaps the petitioner was not even aware of the next date i.e. 31.7.2018, although at the same time it can also be said that an accused is expected to be vigilant enough so as to consult his counsel about the next date in case there is any ambiguity about the same.

Further, upon perusal of the impugned order dated 30.8.2018, it appears that the learned trial Court did not consider all the material facts and the said order seems to have been passed in a hurried manner inasmuch as on the said date it has specifically been recorded that the non-bailable warrants had not been ‘received back’. Thus when there was nothing on record to suggest that the petitioner was evading the execution of warrants, issuance of proclamation was not warranted. Further, the observations of the learned trial Court that *‘the accused instead of moving an application for bail moved an application for cancellation of non-bailable warrants without specifying*

any reason for the same' seem to suggest that the Presiding Officer carried an impression that it was not appropriate to move an application under Section 70(2) Cr.P.C. An accused is well within his rights to seek cancellation of non-bailable warrants and in case there are any justifiable grounds, the Court is fully competent to order for withdrawal of the same.

In the present case, the absence of the petitioner as on 31.7.2018 being the first instance of default and it being apparent from record that when the matter was adjourned from 19.7.2018 to 31.7.2018, the said order was passed in the absence of the parties, it can well be said that the petitioner was not fully informed about the next date. At the same time, as already stated above, the litigant or the accused ought to have been vigilant enough so as to have made an inquiry from his counsel on 19.7.2018 about the next date fixed in the matter and not having done so, the same reflects on the carelessness on part of the petitioner.

Having regard to the facts and circumstances of the case, and bearing in mind the nature of offence and also that it was the instance of first default on part of the petitioner, the impugned order dated 31.7.2018 is hereby set aside and it is ordered that non-bailable warrants be recalled. The petitioner is directed to appear before the trial Court, within one week from today and the trial Court shall release the petitioner on bail subject to his furnishing fresh bail bonds/surety bonds to its satisfaction and upon imposition any other condition as deemed fit.

In view of the fact that the carelessness on part of the petitioner has resulted in some delay in trial Court, the petitioner is imposed a cost of ₹ 10,000/- as compensation. However, in case any compromise is effected

amongst the parties within a period of one month from today, the aforesaid amount of compensation of ₹ 10,000/- shall be taken into account, while settling the terms of compromise.

The present petition stands disposed of accordingly.

13.9.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No