

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

**CRM-M No.33151 of 2018 (O&M)
Date of Decision: 25.03.2019**

Kamal Joshi @ Joshi Kamal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Paramjit Singh Bal, Advocate for the petitioner.

Mr. C.L.Pawar, Senior Deputy Advocate General, Punjab
for respondent No.1/State.

Mr. Pardhuman Garg, Advocate for respondent No.2/complainant.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 482 Cr.P.C. for quashing the impugned order dated 18.09.2017 (**P-3**), passed by learned Sub Divisional Judicial Magistrate, Amloh, vide which, petitioner has been declared as a proclaimed person in Complaint Case bearing NACT/835/2016 Complaint No.334/12.08.2016 (**P-1**), filed under Section 138 of the Negotiable Instruments Act.

This Court, on 20.02.2019, passed the following order:-

“Learned counsel for the petitioner states that the petitioner is ready to join the proceedings before learned trial Court.

Adjourned to 25.03.2019.

In the meanwhile, the petitioner is directed to surrender before learned trial Court within one week and in case of his doing so, be admitted on interim bail till the next date of hearing on his furnishing adequate bail and surety bonds to its satisfaction.”

It is contended on behalf of the petitioner that in pursuance of above order, petitioner has already joined the proceedings before learned trial Court and is regularly appearing. Also contended that as the address of the petitioner was not correctly mentioned in the complaint and that led to the passing of the impugned order, declaring the petitioner a proclaimed person. Further contended that petitioner is ready to fully co-operate with the learned trial Court.

On the other hand, learned Counsel for respondent No.2 did not seriously oppose the quashing of the impugned order, but his anxiety is that petitioner will again evade the proceedings and that may delay the trial.

Heard both sides and perused the paper-book.

Since the address of the petitioner was not correctly mentioned in the complaint and due to that reason, he was not properly served which resulted into declaring him proclaimed person. Moreover, the petitioner has joined the proceedings before learned trial Court and regularly appearing, therefore, impugned order dated 18.09.2017 is set aside and order dated 20.02.2019, granting interim bail to the petitioner, is hereby made absolute.

At this stage, learned Counsel for the petitioner also seeks exemption from personal appearance of the petitioner on the premise that he belongs to State of Gujarat and, therefore, it will not be possible for him to come present on each and every date of hearing.

Keeping in view the fact that petitioner belongs to the State of Gujarat and on each and every date of hearing, it would be inconvenient for him to come present, therefore, liberty is granted to him to appear through his Counsel before learned trial Court uptill the stage of recording the statement

under Section 313 Cr.P.C. However, it is made clear that in case any adverse order is passed against the petitioner due to his exemption, he shall not raise any grievance regarding the same, subject to the following conditions:-

- (i) *petitioner shall be represented through Counsel;*
- (ii) *shall not delay/stall the trial proceedings;*
- (iii) *shall not dispute their identity as accused;*
- (iv) *shall have no objection if the prosecution evidence is recorded in their absence, but in the presence of their Counsel;*
- (v) *shall appear before learned trial Court as and when required;*
- (vi) *any other condition which the learned trial Court may impose.*

It is also clarified that petitioner shall fully co-operate with the learned trial Court and shall not seek any unnecessary adjournment(s).

Learned trial Court is requested to expedite the proceedings at the earliest.

Allowed in the above terms.

March 25, 2019

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>