

S.No.135

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

CRM-M-17239 of 2019 (O&M)

Date of Decision:12.04.2019

Kiran Bakshi

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Ms. Kamlesh, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner for quashing of order dated 25.02.2019 whereby the petitioner has wrongly been declared as proclaimed person in complaint No.941 dated 01.07.2015 registered under Section 138 of Negotiable Instrument Act pending in the Court of learned Judicial Magistrate Ist Class, Ambala.

Learned counsel for the petitioner contends that the petitioner was regularly appearing before the trial Court. She was released on bail. She had either been seeking exemption from the Court or was appearing before it. However, on 18.12.2018, the petitioner had moved an application for exemption from personal appearance. But, the trial Court rejected the application and has cancelled the bail granted to the petitioner. Thereafter, the petitioner has even been declared as proclaimed person in the same case vide order dated 25.02.2019. It is further submitted by the counsel that non-appearance before the trial Court was not intentional. Rather, she was facing medical problem, therefore, she could not appear before the trial Court. Still further, it is submitted that the petitioner was all alone to take care of her illness and her family, because the husband of the

petitioner is already in custody in the connected case. It is further submitted that the procedure prescribed under Section 82 Cr.P.C has not even been properly complied with; before declaring the petitioner as a proclaimed person. However, since the petitioner has now come to know of the fact that the petitioner has been declared as a proclaimed person and further that she is to appear before the trial Court, therefore, the petitioner intends to appear before the trial Court to face the further proceedings in accordance with law. The only prayer is that the petitioner be protected against her arrest.

Notice of motion for respondent No.1 only.

On asking of the Court, Mr. Parveen Aggarwal, DAG, Haryana accepts notice on behalf of the State. He has no objection if the petitioner appears before the trial Court to face further proceedings, in accordance with law.

In view of the order being passed, at this stage, it is not considered appropriate to issue any notice to respondent No.2.

A bare perusal of the order dated 18.12.2018, whereby the bail of the petitioner was cancelled, shows that there is nothing wrong or perverse in the order passed by the Court below. The petitioner has taken too much liberties with the process of the Court. The bail was cancelled only after she did not attend the proceedings, consecutively for four dates. By moving repeated applications, she was only dragging the trial of the case, which is pending since 2015. Hence, there is no ground for interference with the order, on the merits of the case. However, since the petitioner is an accused in the trial, therefore, lest she should have any

grievance, though misconceived, that she is not being granted proper opportunity to defend herself, it would not be unjustified to show some leniency towards the petitioner, however, by putting her to some financial burden.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

In view of the above, the present petition is allowed and the impugned order is set aside, subject to the petitioner appearing before the trial Court on or before 22.04.2019 and further subject to payment of Rs.15,000/- as costs . It is also directed that in case the petitioner so appears before the trial Court on or before 22.04.2019 then she shall be released on bail on her furnishing bail bonds/ sureties to the satisfaction of the trial Court/ Duty Magistrate.

It is further ordered that the amount of cost shall be deposited with Ashiana Children's Home, Sector 15, Chandigarh. The trial Court shall accept the bonds/sureties of the petitioner, only after she produces before that Court receipt of having deposited the costs, as ordered above.

April 12, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No