

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

**CRM-M No.39662 of 2017 (O&M)
Date of Decision: 25.03.2019**

Rajender Kumar Joshi

.....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 30.04.2018, passed the following order:-

“Prayer in this petition is for quashing of order dated 18.09.2017 (Annexure P-3) passed by Sub Divisional Judicial Magistrate, Amloh, whereby the petitioner was declared as a proclaimed person in complaint case bearing No.NACT/835/2016 Complaint No.334/12.08.2016 (Annexure P-1) under Section 138 of the Negotiable Instrument Act.

Counsel for the petitioner states that the petitioner is ready and willing to appear before the trial Court. He contends that as a

matter of fact, the address which has been given in the complaint is incorrect. In support thereof, he places reliance upon Aadhar Card, Annexure P-2. He, on this basis, contends that the petitioner was never served and, therefore, the order cannot sustain. Counsel for the petitioner further states that the petitioner is ready and willing to surrender before the trial Court i.e. Sub Divisional Judicial Magistrate, Amloh and he states that he would put in appearance before the said Court on 15.05.2018 and would move an application for grant of regular bail, which may be considered by the said Court. Counsel also states that the petitioner shall make an endeavour to appear before the Court on each and every date, which may be fixed, unless exempted.

In the light of the statement made by counsel for the petitioner, in case the petitioner surrenders before the Sub Divisional Judicial Magistrate, Amloh, on 15.05.2018 and moves an application for grant of regular bail, the same shall be considered and the petitioner shall be admitted to interim bail to the satisfaction of said Court.

List on 19.07.2018.

To be shown in the urgent list. ”

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 30.04.2018, 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

Whether speaking/reasoned	Yes
Whether Reportable	Yes