

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

CRM-M No.41710 of 2019
DATE OF DECISION : 27th SEPTEMBER, 2019

Rajesh Mehta

.... Petitioner

Versus

Pawan Kumar Mehta

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mrs. Satpreet Grewal, Advocate for the petitioner.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of pre-arrest bail in appeal CIS No.CRA/204/2016, arising from conviction and sentence of the petitioner under Section 138 Negotiable Instruments Act, pending before the court of Additional Sessions Judge, Hoshiarpur, wherein vide order dated 17.09.2019 non-bailable warrants of the petitioner have been issued for failing to appear on the date fixed before the lower appellate court.

It is contended by counsel for the petitioner that during the proceedings of appeal, arising from the conviction and sentence of the petitioner for the offence under Section 138 of the Negotiable Instruments Act, the petitioner was released on bail by the lower appellate Court. Thereafter, the petitioner had been appearing regularly to prosecute his appeal. However, on 17.09.2019 the petitioner could not appear before the lower appellate court. As a result, the bail granted to the petitioner has been cancelled. Hence, the petitioner apprehends his arrest.

It is further submitted by the counsel for the petitioner that in the meantime, even complainant has entered into an agreement with

the petitioner. Pursuant to that settlement, the petitioner has already returned an amount of ₹2.25 lacs to the complainant. However, ₹2 lacs are yet to be returned. The factum of compromise and return of the part of the money finds reflection even in the orders of the court. Still further, it is submitted by the counsel that the absence of the petitioner from the lower appellate court was not intentional. Rather, the same has occurred due to the fact that the petitioner had noted the date wrongly. The petitioner has no intention to flee from the course of justice. Petitioner intends to appear before the lower appellate court to face further proceedings in accordance with law. The only prayer is that the petitioner be protected against his arrest

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, order dated 17.09.2019 (Annexure P-3) is quashed subject to the petitioner appearing before the lower appellate court on or before 16.10.2019. It is further directed that in case, the petitioner so appears before the lower appellate court then the petitioner shall be released on bail on his furnishing bail bond/surety to the satisfaction of the lower appellate court.

27TH SEPTEMBER, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No