IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47241-2019
Date of Decision: 07.11.2019

Heavent Sudhir Malhotra and others

.. Petitioners

Vs.

Shree Naina Plastics Inc

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rakesh Malhtora,
Mr. R.K. Tripathi and
Mr. Ajay Kalra, Advocates for the petitioners.

Mr. Suman Jain, Advocate for the respondent.

...

Manoj Bajaj, J. (Oral)

Petitioners are accused in criminal complaint No.18389-2018 titled as "Shree Naina Plastics Inc. Vs. Xalta Food & Beverages Pvt. Ltd. and others" (Anneuxre P-1) under Section 138 Negotiable Instruments Act, 1881 pending before Judicial Magistrate, 1st Class, Chandigarh and have filed this petition to challenge the part of the impugned orders whereby the trial Court imposed exorbitant surety amount while extending the concession of regular bail. The impugned orders are dated 11.07.2019, 22.07.2019 and 18.10.2019 (Annexures P-2, P-3 and P-4) respectively passed in respect of the petitioners.

Notice of this petition was issued on 05.11.2019 and pursuant to the same, Mr. Suman Jain, Advocate has put in appearance on behalf of the complainant.

Learned counsel for the petitioners contends that the petitioners, who are accused in the complaint brought by respondent under Section 138 Negotiable Instruments Act, 1881, were granted the concession of bail on their appearance vide order dated 11.07.2019 (Annexure P-2) subject to their furnishing the bond for the sum of Rs.10 lacs with one surety in the like amount. He submits that the personal bonds were furnished by the petitioners. However, the Court had granted the time for furnishing the surety bonds. It is pointed out that vide order dated 25.07.2018 (Annexure P-5) passed by the National Company Law Tribunal, New Delhi in CP-720-2018 titled as Nand Kishor Gautam, Super Print Services Vs. M/s Xalta Food and Beverages Private Limited, Mr. Naveen Kumar Jain has been appointed as IRP in view of Section 14 of the Insolvency and Bankruptcy Code, 2016. According to him, the petitioners are facing financial hardship and presently, the petitioners are not in a position to furnish requisite surety bonds as imposed by the trial Court. He contends that once the concession of bail has been extended, the Court should have been reasonable in imposing the amount of the bond. He prays that the amount of the bond be reduced to a reasonable amount, otherwise it would defeat the concession of bail.

Learned counsel for the petitioners has relied upon the judgment passed by Hon'ble the Supreme Court in ***Moti Ram and others Vs. State of M.P, 1978 AIR (SC) 1594.***

Mr. Suman Jain, on the other hand opposed the prayer on the ground that a sum of Rs.71009934.34/- is due to be paid by the accused and pursuant to discharge of the said liability, a cheque bearing No.034633 dated 20.06.2018 was issued for a sum of Rs.1,00,00,000/-. However, it is not disputed by him that the concession of bail has been extended to the petitioners (accused). He further does not dispute that the proceedings before the National Company Law Tribunal are pending against the petitioners.

Learned counsels for the parties have been heard and with their assistance, I have carefully examined the case file. It is revealed that the petitioners are accused in a complaint case under Section 138 Negotiable Instruments Act, 1881, which is bailable in nature and therefore, they were granted the concession of bail. The order of bail restores the freedom of an accused subject to certain conditions, which includes furnishing bail/surety bonds. For the purposes of bail to the accused person, the offences have been classified in two categories i.e. (a) bailable and (b) non-bailable. The offence punishable under Section 138 Negotiable Instruments Act, 1881 is bailable in nature and the said relief of bail is governed by Section 436 Cr.P.C. In such cases, grant of bail is not a discretion, but a right to accused, in case the accused is willing to furnish the requisite bail bonds and surety bonds.

Time and again, Hon'ble Supreme Court and this Court have reminded the trial Courts to be reasonable in imposing the amount of bail/surety bond at the stage of granting bail to the accused. It is a settled law that the amount of the bond must be reasonable and should not be exorbitant as it may defeat the concession and would amount to giving a relief with one hand and taking it away with the other. A perusal of the impugned order reveals that the Magistrate has asked the accused to furnish the surety bonds for an extraordinary higher amount, which is apparently disproportionate to the nature of the offence.

In view of the above, the petition is allowed and the impugned orders are modified by reducing the surety amount to Rs.2 lacs each instead of Rs.10 lacs as imposed by the trial Court. A period of 7 days is afforded to the petitioners to furnish the surety bonds before the trial Court to avail the benefit of bail.

Disposed off.

(MANOJ BAJAJ)
JUDGE

07.11.2019
Jasmine Kaur

Whether speaking/reasoned Yes
Whether reportable No