

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 210/2020 & CrI.M.A. 3140/2020 (interim bail)

SANJAY

..... Petitioner

Through: Mr. Lohit Ganguly, Mr. Ajay Kumar
& Mr. Abhay Ram, Advs.

versus

THE STATE (GNCT OF DELHI) & ANR Respondents

Through: Mr. Ashok Kumar Garg, APP for
State with SI Sachin Dhama,
PS:Narela.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

27.02.2020

The petitioner seeks bail pending trial of Complaint Case No. 2004/2018 under section 138 of Negotiable Instruments Act, 1881 pending before the court of the learned Metropolitan Magistrate, Rohini Courts, Delhi.

2. The case arises from dishonour of a cheque in the sum of Rs.4,00,000/- which was issued by the petitioner to respondent No. 2. From the record it appears that there were repeated defaults in appearance by the petitioner before the Magistrate's Court, which led to initiation of proceedings against the petitioner under section 82 of the Code of Criminal Procedure, 1973.

3. Learned counsel for the petitioner states that the petitioner had infact entered into a settlement with the respondent on 28.08.2018 under the aegis of Mediation Centre, Rohini Courts, Delhi, under which settlement the petitioner undertook to pay certain instalments to respondent No. 2.

4. Counsel submits that Non-Bailable Warrants (NBWs) were issued against the petitioner by the Magistrate by order dated 25.05.2019 for his non-appearance and subsequently proceedings were initiated under section 82 of the Cr.P.C. vide order dated 26.09.2019. On 21.12.2019 the petitioner filed an application seeking cancellation of the NBWs and for dropping of proceedings under section 82 of Cr.P.C., which application came to be listed on 07.01.2020. However it is contended that on 07.01.2020, due to certain unavoidable reasons, the petitioner reached the court late and by that time the application stood adjourned to 14.01.2020. On 14.01.2020 the Metropolitan Magistrate dismissed the petitioner's application seeking cancellation of NBWs and dropping of proceedings under section 82 Cr.P.C.; and remanded the petitioner to judicial custody on 16.01.2020. The petitioner then moved an application under section 437 Cr.P.C. seeking grant of bail, which application was also dismissed. Thereafter, the petitioner moved a bail application under section 439 Cr.P.C. before learned Additional Sessions Judge, which has also been rejected ; and that has led to the filing of the present proceedings.

5. The reasoning given by the ASJ for dismissing the bail application is the following :

"I considered the submissions of Ld. Counsel for applicant/accused and Ld. Addl. PP for the State as submitted above. I perused the order dated 16.01.2020 vide which bail application of accused was dismissed by the Trial court. It is observed in the order that when accused was taken in to custody on 14.01.2020, on account of his continuous absence, due to which proceedings u/s 82 Cr. PC were also initiated against him. It has also been stated in the order that

the accused is habitual absentee and consistent defaulter to make false promises and earlier also NBWs were issued against him and were cancelled upon his assurance that he shall appear on each and every date and shall also honour the settlement arrived at between the parties which he failed to abide. During arguments this bail application, it has not been argued by Id. Counsel for applicant/accused that applicant/accused is ready to abide by the settlement arrived at between him and complainant. It appears that he has deliberately neither abide the settlement nor appeared in the court to face the trial and remained absent continuously. I am of the view that such person is not entitled for bail at all. Therefore, bail application of the accused is rejected.

(Emphasis supplied)"

6. By order dated 27.01.2020, this court directed the petitioner to deposit the sum of Rs.50,000/- before the Trial Court ; and also directed the State to file a status report in respect of the petitioner's antecedents.
7. The deposit of Rs.50,000/- stands confirmed.
8. Status report dated 18.02.2020 has been handed-up in court whereby it is stated that the petitioner is working as 'Beldar' with MCD, Narela Zone and earns a salary of Rs.30,000/- per month. It is also stated that the petitioner's wife is residing in her own house alongwith her mother-in-law and three children aged 20, 16 and 13 years.
9. Learned counsel for the petitioner fairly states at the bar, that while a settlement deed was indeed signed by the petitioner but considering the petitioner's financial status and resources, it is not possible for the petitioner to honour the settlement so made. Respondent No. 2, who is present in court and is identified by the investigating officer, states that, while he does not

wish to withdraw the proceedings but he has no objection if the petitioner is released on bail. Respondent No. 2 further states that he is not agreeable to entering into a re-negotiated settlement with the petitioner and that his only concern is to get-back the money which he had lent to the petitioner. He also agrees that keeping the petitioner in custody will only make the possibility of getting his money back more remote, inasmuch there is no other person in the petitioner's family who can arrange funds for refund of the loan.

10. As recorded above, the petitioner has been in judicial custody since 14.01.2020 ; and the reasons for keeping the petitioner in custody is his default in appearance before the Magistrate and pendency of consequential proceedings under section 82 Cr.P.C. It is not the case that the petitioner is in prison serving any sentence arising from the dishonour of the cheque.

11. The scope and purport of issuing Non-Bailable Warrants has been considered by the Supreme Court *inter alia* in ***Inder Mohan Goswami and Another vs. State of Uttaranchal and Others*** reported as (2007) 12 SCC 1 explaining when Non-Bailable Warrants should be issued, relevant paras of which we reproduce below :-

"53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summon; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the

complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-ailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-ailable warrant."

(Emphasis Supplied)

12. What emerges from a meaningful reading of the above observations of the Supreme Court is that in a matter such as the present one, which is a complaint case involving dishonour of cheque; and in which the petitioner was produced before the court against Non-Bailable Warrants issued by reason of repeated non-appearance of the petitioner and the pendency of proceedings under section 82 Cr.P.C., the purpose of issuing Non-Bailable Warrants stands served once the petitioner has been produced before the court. No purpose is being served thereafter by retaining the petitioner in judicial custody by rejecting his bail application.

13. In this view of the matter, I deem it appropriate to admit the petitioner

to bail, subject to the petitioner furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount from a family member to the satisfaction of the Trial Court. I further direct that the sum of Rs.50,000/- deposited by the petitioner before the Trial Court as per order dated 27.01.2020 made in these proceedings, be released to respondent No. 2 within one week.

14. It is made clear that the effect of the petitioner not honouring the settlement arrived at with respondent No.2 will be considered by the Magistrate, without being influenced by any observations made in this order. It is further directed that as a condition of the bail granted, the petitioner shall ensure that he is present before the Magistrate's Court on each date of hearing, unless exempted from such appearance in accordance with law.

15. The petition stands disposed of.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 27, 2020/uj