

CRM-M-28435-2021

Date of Decision: 10.09.2021

Rajan Grover

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Karanvir Hooda, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.1411 dated 16.12.2020 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram.

2. On 22.07.2021, the following order was passed:-

Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic. Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail in case FIR No.1411 dated 16.12.2020 registered under Section 174-A IPC at Police Station Shivaji Nagar, Gurugram. Learned Senior Counsel assisted by Mr. Karanvir Hooda, Advocate contends that the petitioner was convicted in a case under Section 138, Negotiable Instruments Act, 1881 by the learned Judicial Magistrate, Gurugram vide order dated 02/03.08.2016 in case titled as Rajan Grover v. Rajat Bhayana and another, thereupon the petitioner filed an appeal against his conviction but failed to appear before the learned Additional Sessions Judge, Gurugram despite being summoned through proclamation, accordingly was declared as 'proclaimed person' by the Court of the learned Additional Sessions Judge, Gurugram vide order dated 24.02.2020. Appeal filed by the petitioner against his conviction in the

case under Section 138, Negotiable Instruments Act, 1881 was dismissed not only by the learned Sessions Court but also by the Hon'ble High Court, whereupon the petitioner approached Hon'ble the Supreme Court in which the following order was passed on 05.07.2021:-

“ Special Leave Petition (Criminal) Diary No(s). 10154/2021

Rajan Grover

Petitioner(s)

Versus

Rajat Bhayana& another

Respondent(s)

IA No.54349/2021 Exemption – From Surrendering within Time

IA No.67369/2021 – Stay Application

Date: 05-07-2021

These matters were called on for hearing today. Coram: Hon'ble Mr. Justice Krishna Murari (In Chamber)

For Petitioner(s)

Mr. Narender Hooda, Sr. Adv. Ms. Seema, Advocate Mr. Arvind Aggarwal, Adv. Dr. Surnder Singh Hooda, AOR

For Respondent (s)

Upon hearing the counsel the Court made the following

Order

Application for exemption from surrendering is allowed. Consequently, application for stay application is disposed of.

(Sweta Balodi)
Court Master (Sh)

(RenuBala Gambhir)
Court Master (Nsh)

Learned counsel contends that the aforementioned order was passed in the background of the petitioner having already undergone 09 months imprisonment out of the 01 year imprisonment awarded to him by the learned trial Court.

Learned counsel contends that pursuant to the petitioner being declared as a proclaimed person, FIR No.1411 dated 16.12.2020 under Section 174-A, IPC was registered against him and that in the aforementioned circumstances, the petitioner approached the learned Sessions Court at Gurugram for grant of pre-arrest bail in case FIR No.1411 dated 16.12.2020 for the offence under Section 174-A IPC but the same was dismissed vide order dated 15.07.2021 in view of

the decision of Hon'ble the Supreme Court in ' State of Madhya Pradesh versus Pradeep Sharma', 2014 AIR (SC) 626 and 'Lavesh vs. State (NCT of Delhi) 2012(8) SCC 730 (SC) on the ground that where the accused was absconding and had been declared proclaimed offender, accused was not entitled to grant of anticipatory bail.

Learned Counsel contends that in both the decisions referred to in the order of the learned Additional Sessions Judge, Gurugram, the accused had been declared as proclaimed offender, whereas there was a distinction between the term 'proclaimed person' and 'proclaimed offender', as evident from the decision in *Rahul Dutta vs. State of Haryana*, 2010 (2) RCR (Crl.) 585. Relevant extract of the same is reproduced as under:-

17. The offences mentioned in Section 82(4) Criminal Procedure Code are of recurring nature. All the persons, who are absconding or concealing themselves to evade execution of warrants of arrest, could be proclaimed persons but they could be declared a "proclaimed offender" only under the provisions of the Indian Penal Code which are mentioned in Section 82(4) Criminal Procedure Code. There is stark distinction between a proclaimed person and a proclaimed offender and for that reason, there is a difference of punishment provided under Section 174A Indian Penal Code as it provides imprisonment which may extend upto three years or with fine or with both regarding a person who has been proclaimed in terms of Section 82(1) Criminal Procedure Code and the imprisonment which may extend upto seven years and also with fine in respect of a person who is declared a "proclaimed offender" under Section 82(4) Criminal Procedure Code.

Learned counsel contends that Section 174-A IPC provides for punishment of 03 years in the case of a person, who has failed to appear in response to proclamation under Section 82(1) Cr.P.C. with imprisonment for a term which may extend to 03 years or with fine

or with both but where a proclamation has been made under Sub Section 4 of Section 82 Cr.P.C., pronouncing a person as a proclaimed offender then in that eventuality, the accused is liable to punishment of imprisonment for a term, which may extend upto 07 years and shall also be liable to fine. Learned counsel contends that the learned Additional Sessions Judge has failed to take into account the distinction between the term 'proclaimed person' and 'proclaimed offender', and the decisions referred to by the learned Additional Sessions Judge are not applicable in the facts of the instant case since the quantum of punishment which can be imposed in the case of accused being declared proclaimed person under Section 82(1) Cr.P.C. ranges from imprisonment up to 03 years or fine or both imprisonment as well as fine, whereas in the case of a person being declared a proclaimed offender under Section 82(4) Cr.P.C., accused is liable to imprisonment for a term which may extend to 07 years and shall also be liable to fine. In other words, in the case of infraction of Section 82(1) Cr.P.C., punishment can be as low as imposition of fine while in the case of infraction of Section 82(4) Cr.P.C., mandatory punishment prescribed is imprisonment which can go upto 07 years in addition to fine.

Notice of motion.

Notice re :stay.

Mr. Pawan Kumar Longia, learned DAG, Haryana, accepts notice and requests for time to prepare and address arguments.

Adjourned to 13.08.2021.

In the meantime, arrest of the petitioner is stayed, till the next date.

3. Thereafter on 13.08.2021, the following order was passed :-

“Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

Learned State Counsel states that despite order of this Court dated 30.07.2021 (in CRM-M No.30060 of 2021), the petitioner has failed to join investigation.

Faced with the afore aforementioned situation, learned Senior Counsel assisted by Mr. S.K. Hooda, Advocate appearing on behalf of the petitioner requests for one more opportunity for the petitioner to join investigation.

Adjourned to 10.09.2021.

In the meantime, the petitioner is directed to join investigation and fully cooperate with the police in terms of order dated 30.07.2021 (in CRM-M No.30060 of 2021), failing which the interim protection granted to the petitioner shall stand vacated. The petitioner shall abide by the conditions envisaged under Section 438(2) Cr.P.C.

Photocopy of this order be placed on the file of the connected case.”

4. Today, learned counsel for the petitioner contends while learned State counsel on instructions from HC Nitin Kumar, confirms that pursuant to the order of this Court dated 13.08.2021, the petitioner joined investigation, fully cooperated with the police, was released on ad interim pre arrest bail and that his custodial interrogation is not required and that in the circumstances, he does not wish to file reply.

5. In view of the statement of learned State counsel, order dated 13.08.2021, passed by this Court, is made absolute. The petitioner shall abide with the conditions enumerated in Section 438(2) Cr.P.C. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

6. Petition stands *disposed of* in the aforementioned terms.

(B.S. Walia)
Judge

10.09.2021