IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-42315-2021

Date of Decision: 11.10.2021

Sher Singh …Petitioner

Versus

State of Haryana & another ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Mahir Sood, Advocate, for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking setting aside of order dated 29.09.2021 (Annexure P-19) vide which the trial Court while declining an application for exemption from personal appearance of the accused/petitioner has cancelled his bail.

2. The petitioner has been facing trial in respect of a complaint case under Section 138 of the Negotiable Instruments Act filed by respondent No.2 on account of dishonor of three cheques total amounting to Rs.50 lakhs.

3. Learned counsel for the petitioner has submitted that since the matter has arisen out of a complaint in respect of offence under Section 138 of the Negotiable Instruments Act, therefore, in terms of ratio of the judgment of Hon'ble Supreme Court rendered in Inder Mohan Goswami & another Vs. State of Uttaranchal & others, 2007 (4) RCR (Criminal) 548, the trial Court ideally should

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have issued bailable warrants in the first instance instead of cancelling the bail on the very first day, when he was not present.

4. Learned counsel has further submitted that infact his absence was on account of the fact that there was an ambiguity regarding the date to which the matter was adjourned on 17.03.2021 inasmuch as the order downloaded from the website does not show the date to which the matter was adjourned and space for writing date has been left blank therein. Learned counsel has drawn the attention of this Court to the said order dated 17.03.2021 (Annexure P-13), which reads as follows:

> "Present: None.
>
> File taken up today at 09:00 AM as the undersigned has availed casual leave for 17.03.2021. Hence, case file is taken up and adjourned to _____ for the purpose already fixed. Parties/counsels be informed accordingly."

5. Learned counsel has further submitted that the matter was earlier fixed for the purpose of deposit of 20% amount of the cheques amount and that he is willing and ready to deposit the same immediately upon appearance.

6. I have heard learned counsel for the petitioner.

7. Though, this Court can hardly appreciate the manner in which order dated 17.03.2021 has been uploaded on the website, but the petitioner cannot get any advantage from the same, as he had actually put in appearance before the trial Court on a date thereafter i.e. on 25.03.2021 as is reflected from said order dated 25.03.2021 (Annexure P-14). However, having regard to the facts

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and circumstances of the case particularly the fact that the absence of the petitioner as on 29.09.2021 was apparently the first instance of default on his part, a lenient view is called for in the matter. The petition, as such, is disposed off with a direction that in case the petitioner surrenders before the trial Court on or before 21.10.2021 i.e. the next date fixed before the trial Court, and moves an application for grant of regular bail and also deposits the amount of 20% as already directed, the trial Court shall consider and dispose off his bail application on the day the same is filed in light of directions in *CRM-M-39172 of 2021* titled *Pawan Kumar Vs. State of Haryana and another* decided on 21.9.2021, keeping in view the fact the his absence as on 29.09.2021 was the first instance of default on his part and also the fact that he has chosen to surrender before the trial Court on the very next date and as such, has not made any attempt to flee from justice.

8. It is further ordered that till the next date of hearing before the trial Court i.e. 21.10.2021, operation of the non-bailable warrants, if already issued, shall be kept in abeyance.

11.10.2021 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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