

CRM-M-47591-2019 (O&M),
CRM-M-47600-2019,
CRM-M-47601-2019 (O&M) and
CRM-M-47606-2019 (O&M)

-1-

113+225

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

1. CRM-29953-2021 in/and
CRM-M-47591-2019
Date of decision : 22.09.2021

Heavent Sudhir Malhotra and others ...Petitioners

Versus

Shree Naina Plastics Inc Khata Baddi ...Respondent
2. CRM-M-47600-2019
Date of decision : 22.09.2021

Heavent Sudhir Malhotra and others ...Petitioners

Versus

Shree Naina Plastics Inc Khata Baddi ...Respondent
3. CRM-29943-2021 in/and
CRM-M-47601-2019
Date of decision : 22.09.2021

Heavent Sudhir Malhotra and others ...Petitioners

Versus

Shree Naina Plastics Inc Khata Baddi ...Respondent
4. CRM-29655-2021 in/and
CRM-M-47606-2019
Date of decision : 22.09.2021

Heavent Sudhir Malhotra and others ...Petitioners

Versus

Shree Naina Plastics Inc Khata Baddi ...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

CRM-M-47591-2019 (O&M),
CRM-M-47600-2019,
CRM-M-47601-2019 (O&M) and
CRM-M-47606-2019 (O&M)

-2-

Present: Mr. Rakesh Malhotra, Advocate and
Mr. Ajay Kalra, Advocate for the petitioners.
(In all the petitions)

Mr. Suman Jain, Advocate for the respondent.
(In all the petitions)

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-29953-2021 in CRM-M-47591-2019
CRM-29943-2021 in CRM-M-47601-2019
CRM-29655-2021 in CRM-M-47606-2019

These are the applications filed under Section 482 of Cr.P.C. for preponement of the date of hearing in the abovesaid main petitions from 08.10.2021 to an early date in view of the fact that the present matter is covered by the judgment passed by the Coordinate Bench of this Court in CRM-M-47240-2019 titled Heavent Sudhir Malhotra and others Vs. Shree Naina Plastics Inc, decided on 07.11.2019 (Annexure P-6), which is inter se between the parties.

Notice in these applications.

On advance notice, Mr. Suman Jain, Advocate, appears and accepts notice on behalf of non-applicant-respondent and has submitted that he has no objection in case the present applications are allowed and the date of hearing in the main cases is preponed from 08.10.2021 to today itself for final disposal.

In view of the aforesaid facts and no objection from the

CRM-M-47591-2019 (O&M),
CRM-M-47600-2019,
CRM-M-47601-2019 (O&M) and
CRM-M-47606-2019 (O&M)

-3-

opposite side, the present applications are allowed and the main petitions are taken on Board today itself for final disposal.

Main cases

By this common order, the abovesaid four petitions bearing CRM-M-47591-2019, CRM-M-47600-2019, CRM-M-47601-2019 and CRM-M-47606-2019, which are arising out of similar impugned orders passed in four complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) by the common complainant/respondent i.e. Shree Naina Plastics Inc Khata Baddi through its partner Mr. Krishan Mohan Khanna, shall stand disposed of. Each of the said four petitions have been filed by the three petitioners.

Learned counsel for the parties have consented that the main petition out of four petitions be taken as CRM-M-47591-2019 for the purpose of the present adjudication. It is further submitted that the impugned orders and even the questions of law involved in the abovesaid four cases are same.

The brief facts of the case are that the present petitions have been filed under Section 482 of Cr.P.C. for setting aside the orders dated 11.07.2019 (Annexure P-2), 22.07.2019 (Annexure P-3) and 18.10.2019 (Annexure P-4), vide which while granting the bail to the petitioner(s), the trial Court had required the petitioner(s) to submit the bail bonds in the sum of Rs.10,00,000/- each with one surety in the like amount. The

CRM-M-47591-2019 (O&M),
CRM-M-47600-2019,
CRM-M-47601-2019 (O&M) and
CRM-M-47606-2019 (O&M)

-4-

said order qua petitioner Nos.1 and 3 was passed on 11.07.2019 and qua petitioner No.2 was passed on 22.07.2019. On 18.10.2019, counsel for the accused/petitioners sought a short adjournment and thus, the case was adjourned to 11.11.2019 but it was made clear that no application for exemption would be entertained on the next date of hearing and the earlier orders were to be complied with. Aggrieved against the abovesaid orders of imposing onerous condition while granting bail, the petitioners have filed the present petitions under Section 482 of the Code of Criminal Procedure.

Learned counsel for the petitioners has submitted that in fact, the present case is covered by the judgment dated 07.11.2019 passed by the Coordinate Bench of this Court in CRM-M-47240-2019 titled Heavent Sudhir Malhotra and others Vs. Shree Naina Plastics Inc. It is further submitted that in fact, the said judgment is inter se between the present parties and although, presently, there are four petitions but initially, seven petitions had been filed in the High Court, out of which, three petitions were disposed of vide similar orders passed as in CRM-M-47240-2019.

A perusal of the said order would show that in absolutely similar circumstances where it had been ordered that the bail would be subject to furnishing the bond for a sum of Rs.10,00,000/- with one surety in the like amount, the Coordinate Bench of this Court had observed that the said condition was very onerous and since the offence under Section

138 of the Act of 1881 was a bailable offence, thus, it was right of the accused to be granted bail. In view of the facts and circumstances, that petition was disposed of by modifying the order impugned in the said case by reducing the surety to an amount of Rs.2,00,000/- each instead of Rs.10,00,000/- as imposed by the trial Court. The relevant portion of the order dated 07.11.2019 passed in CRM-M-47240-2019 by the Coordinate Bench of this Court, is reproduced hereinbelow:-

“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.”

Learned counsel for the petitioners has submitted that the petitioners would be satisfied in case the present petitions are disposed of in terms of the abovesaid order.

Learned counsel for the respondent/complainant, although, has opposed the present petitions but could not dispute the fact that in similar circumstances, the Coordinate Bench of this Court had modified the orders which were absolutely similar as the impugned orders passed in the present case and the said orders were passed inter se between the parties and the same had attained finality.

Learned counsel for the respondent/complainant, however, prays that since the complaint is of the year 2018 and the case is still at a very initial stage, the trial Court be directed to expedite the matter and

CRM-M-47591-2019 (O&M),
CRM-M-47600-2019,
CRM-M-47601-2019 (O&M) and
CRM-M-47606-2019 (O&M)

-7-

also conclude the same as expeditiously as possible in a time bound manner.

Keeping in view the abovesaid facts and circumstances, moreso the fact that the matter in issue is squarely covered by the judgment dated 07.11.2019 passed by the Coordinate Bench of this Court in CRM-M-47240-2019 titled Heavent Sudhir Malhotra and others Vs. Shree Naina Plastics Inc. which is inter se between the parties, the relevant portion of which has already been reproduced above, the present petitions are disposed of in the same terms as in CRM-M-47240-2019.

Since the present cases relate to the proceedings under Section 138 of the Act of 1881 in which the complaint is of the year 2018 and the trial has not made much progress, thus, the trial Court is requested to expedite the matter and dispose of the same as expeditiously as possible, preferably within a period of one year.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

22.09.2021

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No