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

CRM-M-1619-2022

Date of decision : 13.01.2022

Harjit Singh

...Petitioner

Versus

HDFC Bank Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kushager Goyal, Advocate for the petitioner

Mr. Saurabh Bhardwaj, Advocate for respondent No.1.

Mr. Praveen Bhadu, AAG, Haryana
for respondent No.2.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for setting aside the impugned order dated 02.12.2021 to the extent that penalty amounting to Rs.50,000/- has been imposed by the Sessions Judge, Sirsa, while granting anticipatory bail to the petitioner in the proceedings initiated by respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) in a Criminal Complaint dated 26.02.2016.

Learned counsel for the petitioner has submitted that in the

present case, the proceedings under Section 138 of the Act of 1881 had been adjourned on account of COVID pandemic and has referred to the zimni orders from 06.02.2021 to 23.09.2021. It is further submitted that from the zimni order dated 06.02.2021, it is apparent that the statement of the petitioner under Section 313 of Cr.P.C. was to be recorded and notice was issued for 18.08.2021 and thereafter, the fresh notices were issued on 18.02.2021 as well as on 25.03.2021 and thereafter, on 03.05.2021, the case was adjourned on account of COVID pandemic and it is only on 23.09.2021 that report had come that the petitioner had been served and his bail order was cancelled and non-bailable warrants were issued for 03.12.2021. It is argued that the petitioner had moved a petition under Section 438 of Cr.P.C. for grant of anticipatory bail on 26.11.2021 and had also referred to the medical record (Annexure P-4), as per which, the petitioner was having back problem and thus, he could not appear on 23.09.2021. It is further argued that although, the Sessions Judge, Sirsa was pleased to grant bail to the petitioner but however, imposed a penalty of Rs.50,000/- in addition to the petitioner furnishing personal bond in the sum of Rs.1,50,000/- with two sureties of the like amount each. It is contended that the said amount of Rs.50,000/- is highly excessive and the same may either be set aside or reduced.

Notice of motion.

On advance notice, Mr. Saurabh Bhardwaj, Advocate, appears and accepts notice on behalf of respondent No.1 and Mr. Praveen Bhadu, AAG, Haryana, appears on behalf of respondent No.2 and have

submitted that they are fully prepared to argue the matter and assist this Court. They have vehemently opposed the present petition and have thus, prayed for the dismissal of the present petition.

Learned counsel for respondent No.1 has submitted that in the present case, the petitioner has completely misused the process of law and has submitted that the petitioner, after the passing of the order dated 02.12.2021, had not challenged the said order and in fact, moved an application dated 15.12.2021 (Annexure P-5) for extension of time to deposit the said amount of Rs.50,000/-. It is argued that vide order dated 15.12.2021 (Annexure P-6), an application was moved and the petitioner was directed to deposit penalty amount of Rs.50,000/- within a period of 30 days from 15.12.2021. It is further argued that the order dated 15.12.2021 is not under challenge in the present proceedings, thus, the present petition deserves to be dismissed on the said ground alone. It is contended that in the present case, a complaint filed under Section 138 of the Act of 1881 is with respect to the loan taken by the petitioner to the tune of Rs.27,60,000/- and for the outstanding amount, a cheque dated 20.11.2015 amounting to Rs.22,20,000/- was issued by the petitioner to the respondent-HDFC Bank and the complaint was filed in the year 2016 and every effort has been made by the petitioner to delay the said proceedings. It is highlighted that earlier also, the petitioner had not appeared before the Court and accordingly, on 07.06.2018, his bail was cancelled and it is only on 12.07.2018 that the petitioner appeared in the proceedings. It is further submitted that three times the cost was imposed

on the petitioner for taking adjournments and for not cross-examining the witnesses of the complainant and ultimately, on 21.01.2019, the defence of the petitioner was struck off and thereafter, the petitioner had filed revision petition before the Sessions Court which had granted one opportunity to the petitioner to lead defence evidence and also imposed cost of Rs.10,000/-. It is submitted that even the said cost of Rs.10,000/- has not been paid by the petitioner and he has not appeared before the Court. It is further submitted that the petitioner was very well aware about the proceedings and even after service, has got the document prepared from a private Doctor to make out a case for anticipatory bail. It is submitted that in the said circumstances, an amount of Rs.50,000/- which has been imposed as penalty is more appropriate and in accordance with law. The reply alongwith zimni orders have been submitted through e-mail, the same are taken on record.

This Court has heard the learned counsel for the parties and has perused the record.

It is not in dispute that after passing of order dated 02.12.2021, the petitioner had moved an application dated 15.12.2021 for extension of time to deposit the said amount of Rs.50,000/-. On 15.12.2021, the Sessions Judge, Sirsa was pleased to pass the following order:-

“Present: Applicant Harjit Singh in person represented by Shri Ramesh Mehta, Advocate.

This criminal miscellaneous application for extension of time to deposit penalty amount of Rs.50,000/-

presented today. It is already checked and registered. Learned counsel for applicant submitted that applicant is hand to mouth and he has suffered various injuries in a road-side accident. He further submitted that applicant is under financial crisis due to Covid-19. Prayer was accordingly made to extend the time to deposit the penalty amount of Rs.50,000/- before the Ld. trial Court.

Heard. In view of the grounds mentioned above, application is allowed and applicant is hereby directed to deposit penalty amount of Rs.50,000/- within 30 days from today, in compliance of order dated 02.12.2021 passed by this Court. Copy of this order be sent to Ld. trial Court. Papers be attached with the bail application.

Date of Order:15.12.2021

*Sd/-
RAJESH MALHOTRA,
SESSIONS JUDGE,
SIRSA.
(UID No.HR0059) ”*

On the basis of the prayer made by the learned counsel for the petitioner, further time of 30 days to deposit the amount of Rs.50,000/- was granted to the petitioner. The petitioner had not challenged the order dated 15.12.2021. The petitioner after having moved an application dated 15.12.2021, and after having suffered order dated 15.12.2021, is estopped from challenging the order dated 02.12.2021. Further perusal of the zimni orders would show that in the present case, penalty of Rs.50,000/- imposed as cost is appropriate and in accordance with law. In the present case, complaint under Section 138 of the Act of 1881 had been filed by the HDFC Bank on the ground that the petitioner had taken a loan of Rs.27,60,000/- and same was due and cheque dated

20.11.2015 amounting to Rs.22,20,000/- was issued and when the said cheque was dishonoured, the present complaint was filed. On 07.06.2018, the petitioner had not appeared and accordingly, his bail was cancelled. Order dated 07.06.2018 is reproduced hereinbelow:-

*“Present: Complainant Ravi Grover in person
represented by Shri M.S. Sethi, Advocate for
complainant-Bank*

Accused Harjit Singh not present

Today the case was fixed for evidence of the complainant, however despite repeated calls since morning neither accused Harjit Singh has appeared nor any intimation on his behalf has been received. It is 3.30 pm. Waited sufficiently. No further wait is justified. Thus bail of accused Harjit Singh stands cancelled and his bail bonds stands forfeited to the State. Let presence of accused Harjit Singh be secured through warrant of arrest for 12.07.2018. Notice to his surety be also issued for the said date.

*(Navjeet Klair)
JMIC/Sirsa
(UID No.HR0280)*

*Date of Order: 07.06.2018
Next date: 12.07.2018”*

On 12.07.2018, the petitioner had appeared and a fine of Rs.100/- was imposed upon him, which was paid on that very date i.e. on 12.07.2018. The cost of Rs.800/- was imposed on the petitioner on account of his seeking an adjournment in spite of the fact that one CW was present. Last opportunity was granted to the petitioner to examine the said witness. Even on 07.12.2018, although, one CW was present but however, was not examined and adjournment was sought by the

complainant and further cost of Rs.800/- was imposed upon the petitioner, thus, totaling the costs to Rs.1600/-. On 21.01.2019, one CW was again presented, however, adjournment was sought by the proxy counsel for the petitioner and thus, cross-examination of the complainant witness-CW1 was closed as in spite of several opportunity given for cross-examination, the petitioner did not do the same. On 10.06.2019, another adjournment was sought by the petitioner and on 25.07.2019 when the petitioner did not appear then again, his bail bonds were forfeited to the State and he was summoned through non-bailable warrants for 09.08.2019. Order dated 25.07.2019 is reproduced hereinbelow:-

*“Present: Complainant in person represented by Shri
M.S. Sethi, Advocate
Accused Harjit Singh absent*

*Accused Harjit Singh has not appeared despite
calling the case several times since morning. It is already
3:30 pm. No further wait is justified. Hence, bail of
accused is cancelled and his bonds forfeited to the State.
Now, accused be summoned through non-bailable
warrants for 09.08.2019. Notice to his surety under
Section 446 Cr.P.C. be also issued for the date fixed.*

*(Vinay Sharma)
JMIC/Sirsa
(UID No.HR0292)*

Date of Order: 25.07.2019”

The petitioner thereafter, filed a revision petition before the Sessions Court against the order dated 21.09.2019, which was allowed and opportunity was given to the petitioner to cross-examine the CW who had not been cross-examined earlier, subject to the cost of Rs.10,000/-.

However, thereafter, the complainant did not come present and vide order dated 27.09.2019, non-bailable warrants were issued against the petitioner. Order dated 27.09.2019 is reproduced hereinbelow:-

“Present:- Complainant in person with Shri M.S. Sethi, Advocate Accused Harjit Singh already absent.

File put up before be being Duty Magistrate. Certified copy of judgment dated 20.09.2019 passed by Ld. ASJ, Sirsa received vide which order dated 21.09.2019 passed by Ld. Trial Court has been set aside and revision of accused/applicant has been allowed subject to costs of Rs.10,000/- payable by the revisionist/accused and out of this amount of costs, 50% shall be deposited in DLSA, Sirsa and the remaining 50% shall be paid to the respondent/complainant through counsel. On depositing/payment of costs, the revisionist/accused will be afforded an opportunity by the Ld. Trial Court to the revisionist/accused to cross-examine the complainant's witness i.e. CW1.

Today complainant not present. NBW issued against accused and B/w issued against his surety received back unexecuted. Let, fresh NBW against accused and fresh b/w against his surety be also issued for date fixed.

Court notice to complainant be also issued for date fixed.

*(Abhishek Chaudhary)
D/JMIC, Sirsa
(UID No.HR0534)*

Date of Order: 27.09.2019”

Even from a perusal of the zimni orders annexed with the present petition, it is apparent that on 06.02.2021, notice was issued to the

petitioner for 18.02.2021 and vide order dated 23.09.2021, the petitioner was served but had not appeared and thus, non-bailable warrants were again issued. The Medical Certificate relied upon by the learned counsel for the petitioner is from a private Doctor. At any rate, the petitioner had been granted the concession of anticipatory bail and amount of Rs.50,000/- had been imposed as penalty which keeping in view the facts and circumstances of the present case, is appropriate and in accordance with law. Nothing has been shown by the learned counsel for the petitioner that the said amount of penalty cannot be imposed by the Court.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

13.01.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**