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

**CRM-M-7558-2021 (O&M)
Date of Decision : 21.03.2022**

Puran Chand Sharma

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. S.S.Dinarpur, Advocate for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

MANOJ BAJAJ, J.

Puran Chand Sharma has filed this petition under Section 482 Cr.P.C to challenge the order dated 13.01.2021 (Annexure P-8), whereby Chief Judicial Magistrate, Yamuna Nagar in violation of the order dated 06.11.2020 (Annexure P-7) passed by this Court, refused to refund the amount of Rs.1,10,000/-, deposited by him in compliance of the anticipatory bail order dated 25.02.2014 (Annexure P-2) relating to case FIR No.428 dated 16.09.2012 (Annexure P-1) under Sections 148, 149, 323, 427, 447, 452, 506 and 380 Indian Penal Code, registered at Police Station, City, Yamuna Nagar.

Learned counsel for the petitioner has argued that upon

implication of petitioner in case FIR No.428 dated 16.09.2012 (Annexure P-1), he apprehended arrest and approached this Court through CRM-M-5049-2014 under Section 438 Cr.P.C to seek pre arrest bail, wherein this Court on 25.02.2014 extended him interim concession and the said order reads as under:-

“Learned counsel for the petitioner contends that as per the allegations in the FIR, one person is stated to be armed with sword and given injury on the shoulders of the complainant but there is no injury on the person of the complainant with sword. He also argued that this is a false case. Civil litigation is pending between the parties and the petitioner is even ready to deposit Rs.1,10,000/- which the learned Additional Advocate General, Haryana states to have been found stolen but had not mentioned in the FIR.

Petitioner is directed to deposit the above said amount within seven days before the Trial Court and will not claim the said amount till the final disposal of the case.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation on 04.03.2014 at 10.00 a.m. and shall abide by the conditions as provided under Section 438 (2) Cr.P.C. Adjourned to 07.04.2014.”

According to Mr. Dinarpur, learned counsel the petitioner deposited the requisite amount on 03.03.2014 and complied with the order dated 25.02.2014, therefore, the interim bail order was finally confirmed by this Court on 07.04.2014 (Annexure P-3). Learned counsel has drawn the attention of the Court to the order dated

25.02.2020 (Annexure P-6) and submitted that the trial in the subject FIR ended in acquittal of all the accused including the petitioner, therefore, he moved an application bearing No.CRM-26961-2020 in CRM-M-5049-2014 for issuance of directions to Chief Judicial Magistrate, Yamuna Nagar for release of the amount of Rs.1,10,000/-, and the same was accepted vide order dated 06.11.2020 (Annexure P-7), as the state counsel did not oppose the claim of the petitioner.

Learned counsel has argued that despite the direction passed by this Court, Chief Judicial Magistrate, Yamuna Nagar proceeded to decline the prayer through impugned order dated 13.01.2021 and dismissed his application for release of the amount. He submits that once the trial of the case is over, the condition imposed at the time of granting the bail to the accused cannot be made binding upon him, merely because the complainant has preferred an appeal, wherein admittedly even no notice has been served. He has argued that the impugned order has been passed by the Chief Judicial Magistrate, Yamuna Nagar in blatant violation of the order dated 06.11.2020 passed by this Court, therefore, petition be allowed and Chief Judicial Magistrate, Yamuna Nagar be directed to release the amount.

On 17.02.2021, while noticing the background of this case, notice of motion was issued to the respondent-State and at the same

time, explanation from Mr. Arvind Kumar, Chief Judicial Magistrate, Yamuna Nagar at Jagadhari was also called for as the impugned order was passed in flagrant violation of clear and unambiguous direction issued by this Court on 06.11.2020. In response, the officer sent his explanation through communication dated 22.02.2021.

The State has also filed short reply by way of affidavit of Subhash Chand, HPS, Deputy Superintendent of Police, Yamuna Nagar.

Learned State counsel has pointed out that though the direction given by this Court on 06.11.2020 is specific, but the trial Court has proceeded to decline the petitioner's request by considering the fact that the complainant has challenged the judgment of acquittal by filing an appeal, and also noticed that in appeal the accused persons have not been served. However, it is conceded by the learned State counsel that the condition imposed by this Court while releasing the petitioner on pre arrest bail, would come to an end on acquittal of the accused as their bail bonds and surety bonds stood discharged on 25.02.2020.

Learned counsel for the parties have been heard and with their assistance, the case file has been perused carefully.

The record of the case reveals that on 25.02.2014 the concession of interim pre arrest bail was extended to the petitioner with

a condition to deposit an amount of Rs.1,10,000/-, who was also prohibited to claim the same till the case is finally decided. Concededly, till the conclusion of trial, the petitioner never claimed refund of the amount and after his acquittal, the accused was very much within his rights to claim refund, which was not opposed by state counsel at all. Thus, the direction issued by this Court on 06.11.2020 is crystal clear and did not require any interpretation, much less by the Chief Judicial Magistrate.

A perusal of the impugned order further shows that the Chief Judicial Magistrate, Yamuna Nagar needlessly proceeded to interpret the order dated 06.11.2020 without any jurisdiction, and further observed that filing of appeal against the judgment of acquittal by complainant was not brought to the notice of this Court, therefore, the amount should not be disbursed to the applicant/accused till further clarification from the High Court. This reasoning is patently absurd and illogical as the order of deposit of amount passed on 25.02.2014 was considered by this Court while issuing the directions on 06.11.2020 for refund of the amount. Besides, the order passed in bail application and the condition imposed therein could not have been stretched beyond the conclusion of trial, therefore, the impugned order dated 13.01.2021 is not sustainable.

Apart from this, the explanation dated 22.02.2021 sent by

Mr. Arvind Kumar, Chief Judicial Magistrate, Yamuna Nagar shows that the officer felt honour in receiving the show cause notice for violation of the order passed by the High Court and attempted to explain that he mistakenly refused to refund the amount as directed by this Court, and regretted inconvenience caused to this Court, as if, the officer failed to comply with the order of this Court on administrative side, e.g.- failure to send requisitioned record of a case, in time. The expression and reasoning contained in the impugned order do not show that the disobedience of the direction by this Court was erroneous as claimed in the explanation, therefore, the same is not worth acceptance.

Thus, in view of the above discussion this Court has no hesitation in holding that Chief Judicial Magistrate, Yamuna Nagar has passed the impugned order by giving irrational reasons, which not only show his dearth of understanding criminal jurisprudence & fundamental principles of law, but also reflect judicial indiscipline on his part, which amounts to grave misconduct and warrants departmental action against him.

Resultantly, the petition is allowed and the impugned order dated 13.01.2021 (Annexure P-8) is set aside. It is directed that the amount deposited by the petitioner pursuant to the order dated 25.02.2014 be refunded to him forthwith.

Let a copy of this order be sent to Hon'ble the Chief Justice

for initiating departmental action against Mr. Arvind Kumar, Chief
Judicial Magistrate, Yamuna Nagar at Jagadhari.

21.03.2022

(MANOJ BAJAJ)
JUDGE

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No