

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11280-2022
Date of decision: 16.03.2022

Abrar Khan
...Petitioner
Versus
State of Haryana & another
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Vipul Sharma, Advocate
for the petitioner(s).

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

Complaint No.	Dated	Sections
1528	02.07.2010	138, 141 and 142 of the Negotiable Instruments Act read with Section 420 IPC

1. Aggrieved from the order dated 07.10.2013 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Faridabad, declaring the petitioner-accused as an “absconder”, in the complaint captioned above, the petitioner has come up before this Court. However, learned counsel for the petitioner does not press this petition for quashing of aforesaid order dated 07.10.2013 at this stage and submits that he will be satisfied in case this Court directs the trial Court to release the petitioner on bail in case he surrenders before it.
2. Notices served upon the official respondent(s) through the State's counsel. Given the nature of order this Court proposes to pass, no notice is required to be issued to the private respondent no.2.
3. Ld. Counsel for the petitioner has argued that all the offences are bailable. He has further submitted that the petitioner was never aware till very recently about filing of the complaint against him. He has drawn the attention of this Court to service report dated 23.07.2010, wherein it has been specifically mentioned by the Process

Server that the petitioner could not be served because he could not find the address and he had requested for complete address. Subsequently, as reflected in service report dated 03.01.2011, again it was mentioned thatailable warrants were not executed, as no person by such name was found to be staying there. He has further submitted that proclamation issued on 07.10.2013 was in violation of Section 82 CrPC. The petitioner was not staying at the address where such proclamation was pasted.

4. The contention on behalf of the State is that given the judicial pronouncements, bail cannot be granted to a proclaimed offender.

5. The petitioner has annexed copies of the complaint and order sheets of Judicial Magistrate Ist Class, Faridabad. Zimni order dated 25.10.2010 reveals that the notices were returned with the report of refusal. However, subsequent order dated 13.11.2010 reveals that the accused could not be served and freshailable warrants were issued against him. The order dated 26.08.2013 reveals that non-ailable warrants against the accused could not be issued for want of his correct address. Despite that, the Court went further and summoned the accused through proclamation under Section 82 CrPC. Perusal of Proclamation (Annexure P-4) reveals that the proclamation was pasted on the address on which the petitioner could not be served and was accepted to be not a correct address, as revealed from the previous order dated 26.08.2013. Vide order dated 07.10.2013, the accused was declared as proclaimed offender. The petitioner claims that he never absconded and in fact he was not aware of the pendency of the complaint in question.

6. The explanation offered by the petitioner is mentioned in paragraphs 10 and 11 of the petition, which are extracted as follows:-

“10. That despite no service having been effected upon the petitioner, on 26/08/2013, the Ld. JMIC, Faridabad, instead of directing the complainant to file the complete address of the petitioner and without recording his satisfaction to the effect that the petitioner has been concealed himself or had absconded, went ahead to issue a proclamation under section 82 Cr.P.C. however, despite the nonailable warrants against the petitioner having not been issued. A copy of the order dated 26/08/2013 attached herewith as Annexure P-3.

11. That pursuant to the order dated 26/08/2013, the proclamation was got issued at the address mentioned in the complaint on 31.08.2013, on the same address here the NBW were issued but the same remained an executed due to want of correct address, i.e. resident of Subhash Colony, Ballabgarh, Haryana requiring him to appear before the court on 07.10.2013. A true copy of the proclamation against the petitioner is attached herewith as Annexure P-4.”

7. The petitioner has offered a satisfactory explanation which led to the passing of orders under section 82 of CrPC and her being declared a proclaimed offender.

8. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh

Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

9. Needless to say that the old complaint is hanging fire because of non-service of the petitioner-accused. However, it cannot be said with certainty as to whether the petitioner was responsible for his non-service or it was deficiency on the part of the complainant to provide complete and accurate address for his service.

10. Be that as it may, much water has flown over the bridge and trial has been delayed and this Court feels that ends of justice will be met if the petitioner is given an opportunity to surrender before the trial Court.

11. Accordingly, the petition is allowed to the extent that the petitioner shall appear before the trial court on the next date fixed and in case the next date is after thirty days, then the petitioner shall appear or within thirty days from today. If the petitioner fails to appear within the stipulated time, this order shall stand recalled automatically under section 482 read with 362 CrPC, without further reference to this court.

12. Ld. trial court would release the petitioner on bail to its satisfaction and also on the following terms and conditions, apart from any other condition which the court may impose, and all these conditions shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

14. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

15. The bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

16. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

17. There has been a lot of delay in this trial, and the causality is the justice delivery system. Given this, the court is affording a final opportunity to the accused with the condition that he shall appear every day, and in case he fails to appear, then it shall be open for the trial court to cancel the bail and forfeit the bonds. Furthermore, if the accused's counsel seeks adjournment or fails to appear, the trial court shall appoint a legal aid counsel and proceed with the trial. Since the complaint is old, and the trial has been delayed, as this court requests, the trial court will expedite the trial and complete it within three months from today.

18. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

19. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the Id. trial court wants to verify the authenticity, it can also verify its authenticity and may download and use the downloaded copy for its record.*

Petition allowed in aforesaid to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

March 16, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.