

CRM-M-58197-2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125 CRM-M-58197-2022(O&M)
Date of decision :15.12.2022

Jitendra M Gada ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saurabh Dalal, Advocate for the petitioner

Mr. Manish Bansal, DAG, Haryana.

Mr. Aditya Jain, Advocate for Rakesh Kumar i.e special power of attorney
of wife of respondent No. 2-Gain P. Kumar

ANOOP CHITKARA, J.

Complaint No.	Dated	Decided by	Sections
NACT/8245/2017	01.07.2017	JMIC Gurugram	138/142 of Negotiable Instruments Act.

1. Challenging the order of cancellation of bail and issuance of non-bailable warrants and proclamation, vide order dated 29.05.2019, passed by JMIC, Gurugram, due to the default in appearances before the trial court, the petitioner has come up before this court.
2. The nature of order this court proposes to pass, no response is required from the respondent.
3. Ld. Counsel for the petitioner contends that the non-appearance was unintentional, without any endeavor to delay the trial, and due to factors beyond the petitioner’s control. Petitioner’s counsel submits that since the petitioner belongs from outside the state he is not in a position to arrange sureties and hence instead of sureties he be permitted to deposit fixed deposits.
4. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet.

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Furthermore, without adjudicating the maintainability of this petition under section 438 CrPC and leaving that question open; given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. Thus, exercising the inherent powers under section 482 CrPC, this court deems it appropriate to grant the following limited relief to the petitioner, subject to compliance with the conditions mentioned in this order.

5. In paragraph no. 4 of the petition, the petitioner explains reasons for non appearance that the wrong address of the petitioner was mentioned in the petition and no notices were served to his address.

6. **The petitioner is directed to surrender before the concerned court on or before 10.01.2023.. The concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing reasonable conditions as it may deem appropriate in the background of the accused's conduct.**

7. In view of submission made by counsel for the petitioner that the petitioner wants to deposit the fixed deposits instead of arrange sureties.

Given above, petitioner is permitted to deposit fixed deposit in view of law laid down by this Court in Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

8. The petitioner is to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, the address where the petitioner generally resides, 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. The bail bonds shall remain in force throughout the trial and in Section 437-A of the Cr.P.C. if not canceled due to non-appearance or breach of conditions.

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9 The order vide which arrest warrants/ proclamation/LOC issued against the petitioner in the complaint shall remain stayed qua the petitioner, till 10.01.2023. **It is clarified that if the petitioner fails to appear before the concerned court, then this order shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court.**

10. By the next date before the trial Court, the petitioner shall deposit a sum of rupees five thousand in the account of the complainant and Rs. 5,000 in the following account and hand over its receipt to the trial court.

Account Name - **HARYANA POLICE WELFARE FUND**
 Account No. - 50100097073807
 Account Type - Saving Account
 Bank Name - HDFC Bank, Sector-8, Panchkula
 IFSC Code - HDFC000108

11. 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.

12. *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 attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed to the extent and subject to the conditions mentioned above. All pending applications, if any, stand disposed.

Trial be expedited.

(ANOOP CHITKARA)
JUDGE

15.12.2022
Jyoti-II

Whether speaking/reasoned: Yes
 Whether reportable: No.