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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55946-2022

Date of Decision: 02.12.2022

SUREKHA MANKOTIA AND ANR

..... Petitioners

Versus

SANJEEV KUMAR

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioners.

JAGMOHAN BANSAL, J. (Oral)

Through instant petition under Section 482 of Code of Criminal Procedure, 1973, the petitioner is seeking quashing of order dated 31.10.2022 (Annexure P-7) passed by Trial Court whereby the petitioners have been declared as proclaimed person in complaint case No. 1937/2022 dated 02.07.2022 filed under Section 138 of the Negotiable Instruments Act, 1881.

Learned counsel for the petitioner inter alia contends that petitioners are neither directors nor employees of M/s Asian Nutrition Private Limited which issued cheque in question. The petitioner No.1 preferred revision before Sessions Court against summoning order dated 18.07.2022 which vide order dated 21.09.2022 directed that in the meantime petitioner shall not be arrested. Learned Trial Court despite orders passed by ASJ, Bathinda has passed order of proclamation. The Trial Court issued non-bailable warrants on 03.08.2022 and without issuing fresh NBW initiated proceedings of proclamation and thereafter vide order 31.10.2022 declared the petitioner as proclaimed offender. The

orders have been passed in haste and summons/warrants were never served upon the petitioners. The respondent intentionally furnished wrong address resultantly, summons/warrants were not pasted at conspicuous part of the residence of the petitioner. The petitioner is not involved in any other FIR. The lapse, if any, was unintentional and petitioner is ready to pay costs of Rs.50,000/-.

Intent of arrest and reason of denial of bail is to secure the appearance of the accused at the time of trial. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction.

The object of arrest is neither punitive nor preventive. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by article 21 but also freedom guaranteed by article 19(1) of our Constitution. Life of every human being is most precious gift of God and everyone has very limited span of life which cannot be spoiled on account of incompetence, personal grudge, vengeance of someone; or brutal, illegal, unethical action of the State machinery. Except habitual offender, commoners living simple life after arrest lose self-respect and confidence within himself as well State. It has become very common to put criminal law in motion even though dispute involved is purely contractual or civil in nature. Many times arrest entails deprivation of source of income of entire family besides forever stigma in a closely knit society like ours. There is neither mechanism to

compensate a man who is later on found innocent nor acquittal can return valuable time, energy, status, future of family members especially children which is lost on account of incarceration of bread earner of the family. Imprisonment before conviction is a sort of punishment especially when rate of conviction in our country is abysmally low.

Keeping in mind:

- i) The object of cancellation of bond or declaration of anyone as proclaimed offender/person is to secure his presence. The petitioner has come forward to face trial and undertakes to appear before trial court on each and every date, thus ,his presence would meet ends of justice;
- ii) The Petitioner for wasting valuable time and energy of courts as well prosecution is willing to pay costs of Rs. 50,000/-;
- iii) The Petitioner is ready to furnish bond/surety to the satisfaction of the trial court;
- iv) The Petitioner is not involved in any other offence;
- v) The petitioner No.1 was granted interim protection by Revisionary Court still Trial Court passed impugned order.
- vi) The petitioner is accused of commission of bailable and compoundable offence.
- vii) Trial pending against petitioners is a complaint case and petitioner is ready to face trial, thus, no prejudice is going to cause to prosecution or complainant;

this court is of the considered opinion that present petition needs to be

allowed, and accordingly, petition is allowed. The petitioner is directed to appear before learned Trial Court on or before 29.12.2022 and on his doing so, the Trial Court shall admit him to bail on furnishing bail bonds alongwith costs of Rs. 50,000/- to be paid to the District Legal Services Authority, Bathinda.

Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

02.12.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>