

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

CRM-M-4127-2022 (O&M)

Date of decision: 10.04.2023

S.Kishore @ Sethuraman Kishore and another

.....Petitioners

Versus

Nahar Industrial Enterprises Limited

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Vikram K. Chaudhri, Sr. Advocate with
Mr.Keshvam Chaudhri, Advocate for the petitioners

Mr. Aalok Jagga, Advocate for complainant-respondent

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 read with Section 483 of the Code of Criminal Procedure for setting aside and quashing of order dated 17.09.2021 passed by the learned Judicial Magistrate 1st Class, Ludhiana in CRM No.25 of 2020 in Criminal Complaint No.COMI-618-2021 titled as **Nahar Industrial vs. V.S. Lignite Powers and others**, and order dated 13.01.2022 passed in the aforementioned criminal complaint.

Learned Senior counsel submitted that the learned trial Court has committed an error in dismissing the application for grant of exemption from personal appearance without considering that the petitioners, 59 and 57 years old respectively, are suffering from varied diseases including hypertension, coronary artery diseases, hypothyroidism and dyslipidaemia, in addition, petitioner No.2 is stated to also having type-2 diabetes mellitus and are under treatment of the cardiology department at AIG Hospital, Hyderabad. He further submitted that the

non bailable warrants have been issued without following the proper procedure, after dismissal of their application seeking personal exemption from appearance before the Court.

Learned counsel for the respondent submitted that impugned orders have been rightly passed by the trial Court, thus, he prayed for the dismissal of the present petition.

Heard.

It is apposite to make a reference to order dated 17.09.2021 passed by the trial Court, the relevant of which reads thus:-

“Having heard both the counsels and considering the case law cited by the counsel for the accused, it comes out that accused persons were summoned for trial under Section-420, 406 read with Section-120-B of IPC vide order dated 28.07.2021. The aforesaid case relates to non-bailable offences which are punishable with imprisonment for a term exceeding 2 years and is a warrant case. In the case of Bhaskar Industries Ltd V Bhiwani Denim Apparels and Ors (Supra), while considering the law relates to the provisions of Section-205 of the Code of Criminal Procedure in connection with a summons case relating to an offence punishable under Section-138 of Negotiable Instruments Act, it is no doubt true that Hon'ble Apex Court held that in a summons case, the question of exemption under Section-205 of the Code of any accused can very well be considered by a Magistrate even without his first appearance in the Court, but the case at hand being a warrant case, the ratio of the aforesaid decision is not applicable to the facts of the present case being decided on distinguishable facts...”

The order dated 13.01.2022 is also required to be referred to, which reads thus:-

“Today the case was fixed for appearance of accused no.2 to 4 through bailable warrants. As per the report of Ahlmad, bailable warrants of accused No. 2 to 4 not received back. Perusal of file reveals that on 17.09.2021 accused moved an application for personal exemption, but same was dismissed vide detailed order of the even date as the prayer of exemption was preferred without availing the remedy of bail. Thereafter, bailable warrants were issued for 13.10.2021 and similar course were adopted for 08.11.2021, 03.12.2021, 23.12.2021 &

13.01.2022. From the said circumstances, it comes out that accused persons are intentionally evading the service, despite being aware of the proceedings of the present case against them and their presence cannot be procured, except with the issuance of non-bailable warrants. Hence, this court left with no option, but to issue the non-bailable warrants against the accused no.2 to 4 for the purpose of procuring their presence. Same be issued for 15.02.2022.”

Hon’ble The Supreme Court in the case of **Inder Mohan Goswami and another vs. State of Uttaranchal and others**, 2007 (12) SCC 1, held thus:

“55 In complaint cases, at the first instance, the Court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the Court, in the second instance should issue bailable warrant. In the third instance, when the Court is fully satisfied that the accused is avoiding the Court’s proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution Courts at the first and second instance to refrain from issuing non-bailable warrants.”

A perusal of the order dismissing the application for grant of exemption reveals the same having been passed by adopting proper procedure and also in consonance with the aforesaid judgment.

The very purpose of issuance of summons, warrants, taking out proceedings of proclamation etc. is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

In view of the above, the impugned orders have been rightly passed by the Magistrate. As such the present petition is dismissed.

However, on anvil of the facts, upon which the exemption was sought from personal appearance, it was incumbent upon the petitioners to have joined the proceedings, before they made the said prayer.

In case the petitioners surrender, and file an application for grant of bail, the same shall be decided on the same day. For the subsequent dates, in case

an application seeking personal exemption is filed, the same shall be considered accordingly.

Disposed of.

10.04.2023
gsv

[AMAN CHAUDHARY]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No