

276- (3 cases)

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

CRM-M-15487-2023 (O&M)

DATE OF DECISION: 25.07.2023

Suman Jindal and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CRM-M-15491-2023 (O&M)

Suman Jindal and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CRM-M-15557-2023 (O&M)

Suman Jindal and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. SwarnTiwana, Advocate,
For the petitioner (s).

Mr. Mohit Thakur, AAG, Punjab.

Mr. Rakesh Kumar, Advocate,
For respondent No.2.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned three cases are being disposed of, since facts are analogues and issues raised therein are common. For brevity, recitals are taken from CRM-M-15487-2023.

2. The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') seeking quashing order dated

03.03.2023 (Annexure P-2) passed by learned Judicial Magistrate First Class, Ludhiana in a complaint case titled “*Rakesh Kumar v. Suman Jindal*” bearing COMA/715/2014 dated 24.01.2014 under Section 138 of Negotiable Instruments Act, 1881 (for brevity, ‘NI Act’), whereby bail bonds of petitioners were cancelled and non-bailable warrants were issued against them.

3. Complaint under Section 138 of NI Act and Sections 120-B, 420, 465, 471 of Indian Penal Code (Annexure P-1) was filed against petitioners by respondent No.2/complainant with regard to dishonour of cheque amounting to Rs.2,75,000/-.

4. Learned counsel for petitioners argues that petitioners have been falsely implicated as the cheques in question were misused by the complainant and her husband. Late Anil Jain, husband of petitioner No.1 and father of petitioner No.2 committed suicide while naming the complainant and her husband for harassing him. Further contends that petitioners are facing trial since 2013 and petitioner No.1 barely appeared before learned trial Court after furnishing bail bonds as she was given exemption considering her old age. She is suffering from various ailments. Petitioner No.2 was regularly appearing and now the case is at the stage of arguments. Non-appearance of petitioners on 03.03.2023 was neither intentional nor deliberate. Earlier father of petitioner No.2 was not keeping good health and unfortunately he expired on 09.02.2023. Learned counsel further urges that on 03.03.2023, he moved an application (Annexure P-3) for exemption from personal appearance on account of some personal difficulty, but the same was not considered by learned trial Court.

4.1 Learned counsel for petitioners further contends that there is nothing to be recovered from petitioners. They never intended to evade the trial which is pending for the last more than 09 years. They are ready and willing to join the proceedings.

5. Per contra, learned counsel for respondent No.2 submits that bail granted to petitioners was rightly cancelled by learned Court below as the petitioners did not appear with the sole intent to delay the case as it was pending for final arguments.

6. I have heard learned counsels for parties and perused the record.

7. Perusal of the record reveals that personal appearance of petitioner No.1 was exempted by learned Court below considering her old age. Evidence of witnesses was also recorded in her absence. Petitioner No.2 was continuously appearing and on 03.03.2023, he moved an application for exemption from personal appearance which was not considered by learned trial Court.

8. Petition supported by an affidavit of petitioner No.1- Suman Jindal shows that the Court had granted her exemption from personal appearance owing to her old age and ailments. Impugned order dated 03.03.2023 does not show if before that date any specific order had been passed requiring her to appear personally on 03.03.2023 or otherwise the order of her exemption from personal appearance had been cancelled. In such circumstances, I am of the opinion that the learned trial Court was not justified in ordering cancellation of her bail/surety bond and their forfeiture to the State and issuance of non-bailable warrant of arrest against her.

8.2 As regards her husband Sharad Jindal co-petitioner, an application Annexure P- 3 had been moved before the learned trial Court stating that due to urgent family issue, he had to travel outside the city and was unable to attend the Court. Impugned order does not even refer to the said application, let alone its consideration by the learned trial Court. Thus, no order whatsoever was passed on this application. Instead, the impugned order was passed for cancellation of his bail and surety bond and their forfeiture to the State and issuance of non-bailable warrant of arrest against him. Such approach to the

case by the learned trial court was less than being proper and fair to say the least.

9. Section 446 (1) of the Code of Criminal Procedure provides that where a bond under this Code is for appearance before the Court and it is proved the satisfaction of the Court that the same has been forfeited, the Court shall record the grounds of such proof and may call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Sub section (2) of the section *ibid* shows that if sufficient cause is not shown, the Court may impose and proceed to recover the appropriate penalty. In present case, in addition to ordering the forfeiture of the bond and surety bonds of the petitioners as per the provisions *ibid*, the learned trial Court also straight away cancelled the bail of both the petitioners. In my opinion, cancellation of bail ought not to have been so lightly ordered as it is a serious matter, entails curtailment of personal liberty and can have significant adverse effect on the life of the affected persons.

10. As a result of above discussion, I am of the view that impugned order cannot be sustained and same is set aside. Non-bailable warrants issued against the petitioners are also quashed. Earlier bail orders stand revived on bail bond and surety bond already furnished by petitioners before learned Court below. Petitioners are directed to join proceedings before learned Court below within four weeks from today and shall continue to appear before learned trial Court without default.

11. All the three petitions are accordingly allowed with costs of Rs.5000/- each (Rs.5000/- x 3 = Rs.15,000/-) payable to respondent No.2/ complainant, which shall be a condition precedent. If the costs are not paid, as directed, the impugned orders shall stand restored.

12. However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case

as the same are for the limited purpose of disposal of the instant petitions alone

and learned trial Court shall proceed in accordance with law, without being influenced with this order.

13. Pending application(s), if any, shall also stand disposed of.
14. Photocopy of this order be placed on the files of connected cases.

JULY 25, 2023
Shalini

(ARUN MONGA)
JUDGE

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