

116

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

CRM-M-32386-2023 (O&amp;M)

Date of decision: 20.07.2023

Damanpreet @ Annie Saluja

....Petitioner

versus

Narinder Sharma and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Charanpuneet Singh, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

\*\*\*\*\*

**ARUN MONGA, J. (ORAL)**

Petition herein is for quashing of order dated 10.05.2023 (Annexure P-8) whereby learned Judicial Magistrate First Class, Ludhiana issued proclamation warrant of accused/petitioner in the proceedings arising out of criminal complaint under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act'). Further challenge has been made to order dated 13.04.2023 (Annexure P-7) whereby non-bailable warrants of ordered to be issued against petitioner.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent No.1 had filed one criminal complaint under Section 138 of the Act for dishonour of a cheque amounting to Rs.2 Lakh. Being a bailable offence, petitioner was admitted to bail in the case.

2.2. On 21.04.2022, notice of accusation was served upon the petitioner to which she pleaded not guilty and thereafter she was facing trial. Petitioner filed a petition bearing CRM-M-59108-2022 before this Court seeking quashing of proclamation warrants issued earlier on 20.10.2022. Vide order dated 23.02.2023 (Annexure P-2), aforesaid petition was disposed of by directing the petitioner to surrender before learned trial court on or before 04.03.2022 and be admitted to bail. Petitioner duly complied with the directions of this Court and surrendered and was subsequently granted bail by learned trial court after fulfilling all the formalities and the costs per order dated 23.02.2023.

2.3. Thereafter petitioner joined trial but on 29.03.2023, matter was sought to be fully settled by both the parties. Petitioner actively participated in discussions regarding the modalities of the settlement and she was present with the complainant in Court premises but her presence was not recorded. However, petitioner remained under a *bona fide* impression that her presence was marked on 29.03.2023.

2.4. On the next date of hearing, i.e., 13.04.2023, petitioner came to Court complex and firstly got her presence marked in another complaint filed under Section 138 of the Act. However, thereafter her state of health deteriorated and she had to rush to hospital for medical care. In the present case, learned trial Court formed a mistaken belief that petitioner intentionally absented herself from the Court proceedings and she was ordered to be summoned by way of non-bailable warrants of arrest vide order dated 13.04.2023 (Annexure P-7). Learned trial Court passed the order of issuance of Non-bailable warrants on the premise that the presence of the accused could not be procured through ordinary mode of summons. But in fact, no summons were ever issued to the petitioner. Thus learned trial Court committed grave error by cancelling the bail order and issuing warrants of arrest vide impugned order dated 13.04.2023 (Annexure P-7), without following the proper legal procedure.

2.5. Petitioner did not receive any intimation regarding warrants and learned trial Court passed the order of proclamation warrants in haste and in mechanical manner vide another impugned order dated 10.05.2023 (Annexure P-8).

3. Learned counsel for petitioner contends that default in appearance was due to circumstances beyond control, as aforesaid and not at all intentional. Due to personal difficulty, the petitioner could not appear. However, without issuing any prior notice to the petitioner and without giving an opportunity of being heard, learned trial Court firstly issued non-bailable warrants and thereafter proclamation warrants. Resultantly, the impugned orders dated 13.04.2023 and 10.05.2023 (Annexures P-7 and P-8 respectively) are unsustainable in law.

4. Learned State counsel, on advance service of petition, appears on behalf of respondent-State of Punjab and opposes the prayer made and submits that learned trial Court rightly issued proclamation warrant as she herself chose not to appear.

5. Given the nature of order being passed, there is no necessity to serve respondent No.1/complainant, as no serious prejudice would be caused to him. Service upon respondent No.1 is thus exempted at this stage.

6. Heard.

7. No doubt, learned Court below has got discretion to cancel the bail in case accused fails to appear before the Court in violation of the bail bonds furnished. However, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford accused an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned Court below in the instant case. In the peculiar premise, in my opinion, Ld. Court below has committed patent irregularity by not according an opportunity to accused/petitioner to explain her default by first issuing notice as to why her bail bonds be not cancelled. On this ground alone, impugned order dated 13.04.2023 (Annexure P-7) to the extent of cancellation of bail deserves to be set aside.

8. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein.

9. There being sufficient reasons beyond control of the petitioner which caused her default on a few dates of hearing, I am of the view that impugned order dated 13.04.2023 (Annexure P-7) cannot be sustained.

10. As a natural corollary, since impugned order dated 13.04.2023 (Annexure P-7) is not sustainable, subsequent order dated 10.05.2023 (Annexure P-8) issuing proclamation is also liable to be set aside.

11. That apart, since the very purpose of initiating proceedings against petitioner under Section 82Cr.P.C. was to ensure her presence before learned trial Court and petitioner is ready to give an undertaking before the Court that she will appear before

learned Court below as and when required, therefore, no useful purpose would be served to continue proceedings under Sections 82/83, *ibid*.

12. In the premise, the instant petition is allowed and impugned orders dated 13.04.2023 and 10.05.2023 (Annexures P-7 and P-8 respectively) are set aside. Petitioner be released on bail on her causing appearance before learned Court below within three weeks from today, on furnishing bail bonds to its satisfaction. Petitioner shall join proceedings before learned Court below and shall continue to appear without default during pendency of trial.

13. 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 hearing the instant petition alone and learned Court below shall proceed without being influenced with this order.

14. Petition is accordingly disposed of.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

20.07.2023  
Vandana

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