

CRM-M-51556 of 2021

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

CRM-M-51556 of 2021
Reserved on: 12.01.2023
Pronounced on: 20.01.2023

Parbodh Chander Yadav

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: None for the petitioner.
Mr. Vikrant Pamboo, DAG, Haryana.
Mr. Sanjay Verma, Advocate, for the complainant.

NAMIT KUMAR, J.

The case was called twice, however, none has put in appearance on behalf of the petitioner.

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in Criminal Appeal No.9535 of 2019 and Complaint No.6859 of 2017 by impugning order dated 06.10.2021 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Gurugram, whereby fresh non-bailable warrants have been ordered to be issued against the petitioner and notice to his surety and identifier have also been ordered to be issued.

The facts as pleaded in the present petition are that respondent No.2-complainant filed criminal complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'), wherein the trial Court vide

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judgment of conviction and order of sentence dated 13.11.2019 convicted and sentenced the petitioner to undergo simple imprisonment for one year and to pay compensation of Rs.17,00,000/- (Rs.15,00,000/- + Rs.2,00,000/-) to be paid to the complainant, under Section 138 of the NI Act. Aggrieved against the judgment of conviction and order of sentence dated 13.11.2019 of the trial Court, petitioner filed appeal before the Sessions Judge, Gurugram. The said appeal was admitted on 14.12.2019 and petitioner was ordered to deposit 20% of the compensation amount awarded by the trial Court, to be disbursed to the complainant as per rules. A copy of the same is placed on record by learned counsel for the complainant. Order dated 14.12.2019 reads as under: -

“Convict put in his appearance in pursuance of the directions of the Court given vide order dated 12.12.2019. It is an appeal against the conviction of the accused-appellant for the commission of offence under section 138 of N.I.Act. Heard. In view of grounds of appeal and facts and circumstances of the case, the finding recorded by the Trial Court are required to be re-appreciated as per the grounds being put forward, as such the appeal stands admitted. Heard on the application seeking suspension of sentence and bail. Although the period for which the sentence awarded to the convict was suspended by the Trial Court, has already expired, yet in view of the fact that since the appeal has been admitted for hearing on merits and it will take sometime to dispose off the appeal, the impugned order of sentence is suspended till the conclusion of appeal and the appellant is bailed out subject to furnishing the bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of this Court with a further direction to deposit 20% of the compensation amount awarded by ld Trial Court in this Court to be disbursed to the complainant as per rules. Bonds furnished, accepted and attested. Let a copy of this order be sent to the learned Area Magistrate for necessary information and further action. Requisite intimation be sent to the concerned Tehsildar regarding furnishing of the surety by Rajaram

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s/o Daulat Ram in favour of the accused to facilitate them to incorporate the entry regarding furnishing of the surety by the surety in the record in pursuance of the order dated 1.6.2018 passed by the Hon'ble High Court in Civil Writ Petition no.4898 of 2018. Let notice of the appeal be issued to the respondent for 27.2.2020 on filing of requisite copy of grounds of appeal and PF etc."

It has been pleaded in the petition that petitioner was not able to deposit 20% of the compensation amount as he met with an accident and was suffering from injury in his leg and got treatment from the Civil Dispensary, Village Khol, District Rewari and, therefore, could not appear before the lower appellate Court and vide order dated 11.08.2021, his bail was cancelled and bail bonds were forfeited to the State and the case was adjourned to 06.10.2021 for issuance of non-bailable warrants against the petitioner and notice to his surety and identifier was ordered to be issued for the date fixed.

After hearing learned counsel for the respondents and on perusal of the record, this Court is of the opinion that firstly, the instant petition is not maintainable in view of the judgment of the Hon'ble Supreme Court in the case of ***Manish Jain v. Haryana State Pollution Control Board***, 2022(1) SCC(Cri) 676 that a person released on bail is already in constructive custody of law and if law requires him to come back to custody for specified reasons, application for anticipatory bail would not lie.

Secondly, the Court of learned Additional Sessions Judge, Gurugram vide order dated 14.12.2019 while admitting the appeal, has ordered the petitioner to deposit 20% of the compensation amount awarded by the trial Court, to be disbursed to the complainant as per rules, however, the said order was neither challenged by the petitioner nor was

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complied with by depositing 20% of the compensation amount and also did not appear before the Court on 08.03.2021 and 11.08.2021 when his bail was cancelled and bail bonds were ordered to be forfeited to the State and non-bailable warrants against him were ordered to be issued along with notice to his surety and identifier. Deposit of 20% of the compensation amount in terms of Section 148-A of the NI Act is mandatory and on non-compliance of the same petitioner's bail has rightly been cancelled. In ***Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi, 2020(1) R.C.R. (Criminal) 604*** the Hon'ble Supreme Court has held that where a conditional order of suspension of sentence has been passed by the Appellate Court, on non-fulfilment of the condition, the suspension order can be vacated. Reference may be made to Paras 17 to 19 of the judgment, which are reproduced as under:-

“17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the Vivek Sahni' case.

18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing noncompliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

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19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”

In view of the above, there is no merit in the present petition and the same is dismissed.

20.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No