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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 21, 2023

Sudagar Singh @ Saudagar Singh

....Petitioner

versus

State of Punjab and another

....Respondents

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

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks pre-arrest bail in case arising out of Criminal Complaint bearing CIS No.NACT-416/2017 titled as “**State Bank of India Vs. Sodagar Singh**”, decided on 08.03.2022 vide which learned Judicial Magistrate 1st Class, SBS Nagar. Appeal against the same bearing CRA-24/2022 titled as “**Saudagar Singh Vs. SBI**”, is pending before learned Additional Sessions Judge, SBS Nagar.

2. Complainant bank/ respondent No.2 had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (for short ‘NI Act’) against the petitioner *qua* a term loan of Rs.1 lakh disbursed by the Bank. In order to discharge his liability, petitioner issued a cheque dated 12.09.2017, for an amount of Rs.60,809.32 paise in favour of respondent/Bank. The said cheque was returned unpaid with remarks “funds insufficient”. Bank issued a registered notice dated 15.09.2017 demanding cheque amount, but complainant failed to do so leading to institution of complaint under Section 138 NI Act.

2.1. Vide an order dated 08.03.2022 (Annexure P-2), learned JMJC, SBS Nagar convicted the petitioner for aforesaid offence and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.500/-, in default thereof, to further undergo Rigorous Imprisonment of 10 days. On an application, substantive

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sentence of petitioner was suspended for a period of one month i.e., upto 07.04.2022 by learned JMIC SBS Nagar, vide order dated 08.03.2022 (Annexure P-3).

2.2. Petitioner preferred an appeal bearing CRA-24-2022 against aforesaid order of conviction and sentence before learned Appellate Court. Vide order dated 07.04.2022 (Annexure P-4), application of the petitioner for suspension of sentence was allowed till decision of appeal, subject to furnishing personal bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of trial Court/ Duty Magistrate, within a period of 15 days.

3. Learned counsel contends that due to circumstances beyond his control, petitioner was unable to arrange surety in compliance to aforesaid order within the specified time. As such, he was unable to appear before learned trial Court/ Duty Magistrate, as directed. Vide order dated 26.05.2022 (Annexure P-5), bail order of petitioner was cancelled and his bail bonds and surety bonds were ordered to be forfeited to the State. Non-bailable warrants of his arrest were also issued. Petitioner applied for pre-arrest bail before learned Additional Sessions Judge, SBS Nagar, but the same was dismissed vide order dated 05.08.2023 (Annexure P-6).

4. Notice of motion.

5. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of respondent-State of Punjab and opposes the prayer made by learned counsel for petitioner.

6. Given the nature of order being passed, there is no necessity to issue notice to respondent No.2, as no serious prejudice would be caused to it. Notice to respondent No.2 is thus dispensed with.

7. I have heard learned counsel for parties and perused the case file.

8. It transpires from the record that petitioner has already filed an appeal against order dated 08.03.2022 (Annexure P-2). Along with the appeal, he also filed an application for suspension of sentence, which was allowed vide order dated 07.04.2022 (Annexure P-4) and his sentence was ordered to be suspended during pendency of appeal, subject to his furnishing personal bond for a sum of Rs.50,000/- along with surety bond.

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Unable to arrange for personal bond as well as surety bond, he could not secure bail. Resultantly, order dated 07.04.2022 (Annexure P-4) suspending his sentence was recalled by learned Appellate Court and his bail was cancelled and personal bond and surety bond were forfeited to the State. Being fearful of arrest, present anticipatory bail petition has been filed.

8.1. Having gone through the averments, I am of the view that petitioner ought to first approached learned First Appellate Court seeking modification of bail conditions by filing an application. However, in the interest of justice, in the interregnum of his preferring such an application, upon his causing appearance before learned First Appellate Court, petitioner shall not be arrested and will be released on interim bail, subject to final outcome of application to be filed by him. In case, no application is preferred within 30 days from today, interim protection granting by this Court shall be deemed as vacated.

9. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

September 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No