* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision : 06.03.2023***

\+ CRL.M.C. 1532/2023

ANSHUL SHARMA ..... Petitioner

Through: Mr. Sumit K. Kalra, Advocate.

VINOD KUMAR ..... Respondent

Through: Mr. Ajay Harshana, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

Crl. M.A. 5844/2023 (Exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

CRL.M.C. 1532/2023 & Crl. M.A. 5843/2023 (Stay)

1. This petition under Section 482 Cr.P.C has been filed by the petitioner with the following prayers:-

> *"(i) the present Petition be admitted, the record of Hon'ble Appellant Court in Crl Revision no- 16/2023 and record of LD. Trail court in CC no -1672/2019 pending in the court of Shri Ankit Mittal, MM -04 N I Act S/E Saket Courts New Delhi regarding this matter be summoned and for the want of records any other orders may pleased be passed thereby.*

(ii) the appropriate order may pleased be passed thereby setting aside the impugned order dt.11-01- 2023 in Crl Revison no 16/2023 Passed by Shri Arul Verma, ASJ (South/East), Saket Courts New Delhi thereby confirming the Order dated 18-10- 2022 in case tilled as Vinod Kumar ys Anshul Sharma in CC no-1672/2019 u/s 138 N.JAct Passed by the court of Sh. Ankit Mittal, M.M NI Act, South-East, Saket Courts New Delhi thereby allowing the application filed by complainant under section 143A, of N.I Act and said order may dated 18-10-2022 may leased be also set-aside in the interest of justice, thereby allowing the present Petition in favour of the Petitioner.

(iii) Any other relief, which the Hon'ble Court deems think fit and proper in the circumstances of the present case, be also passed in favour of the Revisionist/ Petitioner."

2. It is submitted by learned counsel for the petitioner that impugned order dated 11.01.2023 is against the law and has been passed in a mechanical manner. It is further submitted that learned Trial Court ignored the fact that the petitioner/accused has not admitted the alleged loan as such there is no legally enforceable liability. It is further submitted that the alleged amount i.e. Rs. 32 Lakhs which is stated to be paid in cash to the petitioner has not been proved. It is further submitted that Section 143 A is not applicable upon the petitioner as complainant has been partly cross-examined and cross was deferred for want of certain papers. He further submitted that application under Section 143A has been moved at belated stage with ulterior motive to twist the arms of the petitioner.

3. In the instant case, for proper adjudication, it is necessary to look into to the orders dated 18.10.2022 and 11.01.2023.

4. The relevant portion of the order dated 18.10.2022 reads as under:

> *"7. It is pertinent to mention here that the accused in his defence recorded u/s 251 Cr.P.C have stated that he took the loan for the complainant in the year 2015-2016 and gave the cheque in question as security which was repaid in year 2016, however, complainant kept on taking money on that loan amount by charging the rate of interest at the rate of 20% per month which he stopped paying in the month of August, 2018 and thereafter, complainant misused the security cheque which was issued by him in the year 2015-16.*
>
> *8. Coming back to the objections raised by the Ld. Counsel for the accused in his reply stating that the present application is not maintainable on the ground that the present Section is not applicable since the complainant has been partly cross examined is not tenable and frivolous because as per Section 143A N.I. Act, application for interim compensation is maintainable after the stage of framing of notice and no bar/exception has been crafted in the language of the Section 143A N.I. Act whereby if application is moved after the framing of notice it would be rendered infructuous or would be hit by the principle of laches and delay rather the language of Section 143A N.I. Act is liberal in nature. Secondly, the abjection of the Ld. Counsel for the accused there is no legal debt or enforceable liability of the accused is a matter of trial and cannot be adjudged at this stage. Thirdly, the objection of the Ld. Counsel for the accused is that the alleged loan of Rs. 32 Lakh in cash is not possible is also of matter of trial, however it is pertinent to mention here that in his defence recorded u/s 251 Cr.P.C, accused has himself admitted that he took the loan from the complainant and same has been repaid. Fourthly, the objection of the Ld. Counsel for the accused that the present complaint is not maintainable since the complainant is not licensed moneylender and therefore, it is barred by law is again matter of trial and cannot be adjudged at this stage. Further, even as per the complaint also alleged transaction is friendly in nature, therefore, the aspect whether loan was given in the capacity of money-lender or not would be determined at the stage of trial.*

> *9. After considering the aforesaid plea of defense and the material on record, this court is of the considered view that there is prima-facie material (at this stage) for allowing the application u/s 143A N. |. Act in favour of the complainant. Therefore, this Court deems it fit to award an interim compensation to an extent of 10% of the cheque amount ie. Rs.3,20,000/-. Accordingly, the accused is directed to pay an amount of Rs.3,20,000/- to the complainant within 60 days from today. In case of acquittal of the accused, the amount paid as interim compensation shall be recoverable in terms of 143A (4) N.I. Act.*
>
> *10. Having said that, it is made clear that this order shall have no bearing on the merits of the complaint, since the complaint has been judged only on a prima-facie basis at this stage.*
>
> *Accordingly, application is disposed off as allowed."*

5. Further, the relevant portion of the order dated 11.01.2023 reads as follows:

> *"7. In the present case, the Ld. Trial Court has directed the accused to pay interim compensation amounting to 10 % of the amount of cheque, which is within the 20% mandated as per Section 143A (2) of NI Act. Further, the accused has been directed to pay the said amount within 60 days from the date of order, which is also in terms of Section 143A (3) of NI Act.*
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> *8. A perusal of record further reveals that prima facie the accused approached the complainant and requested him to give a sum of Rs 32,00,000/- as friendly loan. The said loan was given in cash. Merely because a huge amount of loan was given in cash, cannot lead to the assumption that the transaction was illegal, certainly not at this stage. Thus this is not the stage to adjudicate as to whether there was a legally enforceable debt or liability. In fact, whilst recording the plea of defense of the accused u/s 251 of Cr.PC, he, as per the order of the Ld. Trial Court, himself admitted the factum of taking loan from the complainant. Further, it is pertinent to note the trial has not yet culminated and the fact whether loan was given in the capacity of money-lender or not, shall be determined at the stage of trial. There is thus nothing on record for the Court to not exercise the discretion to grant compensation u/s 143 A of NI Act.*

*9. In **Suryodhan Tyagi Proprietor of Tyagi Tent House and Another Vs Tirender Sharma 2022 SCC Online Del 164 ,** the petitioner sought inter alia quashing of order passed by Ld Metropolitan Magistrate u/s 143A of NI Act directing the petitioner to pay 20% of the Cheque amount within 60 days of passing of the order. It was held as thus"*

> *"12The important conditions which are required to be complied before directing interim compensation are that the trial should be a summary trial or a summons case, notice/charge should be framed and the petitioner had pleaded not guilty. Thus, the requirements under Section 143A NI Act stands proved beyond reasonable doubt by the respondent."*
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> *"13In the decision reported as (2020) 2 SCC 514 Surinder Singh Deswal Virender Gandhi the Hon'ble Supreme Court held that Section 148 NI Act used the word "may" is generally to be construed as a rule as "shall" and not as an exception for which the Court has to assign special reasons for directing interim compensation."*
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> *"14As noted above, the twin conditions of the complaint being tried as a summary trial and secondly the charge/notice having been framed against the petitioner to which he pleaded not guilty having complied with, this Court finds no infirmity in the impugned order dated 26" October, 2021. Further, as noted above, the petitioner filed a revision petition against the said order which was dismissed as withdrawn and hence the petitioner cannot now avail the remedy of filing a petition under Article 226 of the Constitution of India in respect of the said relief."*

10.In the present case too, as is evinced from a perusal of order sheet dated 09.12.2021. the twin conditions of complaint being tried as a summons case, and the notice having been framed against the accused to which he pleaded not guilty, are prima facie satisfied. Lastly, this Court also concurs with the reasoning of the Ld. Trial Court qua the fact that the moving of application u/s 143A Of NI Act after framing of notice, would not render the application infructous. The legislative intent behind enaction of Section 143A of NI Act would be stultified if the complainant would be debarred from moving an application u/s 143A of NI Act a tad belatedly. In any case the complainant has moved the application within a couple of dates after framing of notice."

6. Furthermore, a bare perusal of the orders dated 18.10.2022 and 11.01.2023 shows that petitioner has admitted his liability qua alleged loan and issued post dated cheques as security. As far as the

contention with regard to legal enforceability; the alleged loan of Rs.32 Lakhs taken in cash and other contentions with regard to maintainability is concerned, in a nutshell, these are the matter of trial and cannot be decided at this stage.

4. Merely because it is stated by the counsel for the petitioner that huge amount of Rs.32 Lakhs cannot be given in cash and thus, interim compensation cannot be granted, warrants no interference. Furthermore, the learned Trial Court noted in the contested ruling that the first prerequisite for a request under Section 143A of the NI Act is that the complaint be heard as a summary or summons trial case and that a notice be issued on which the accused has pleaded not guilty.

5. Section 143A of the NI Act which came into force with effect from 1st September, 2018 reads as under:

> *"143A – Power to direct interim compensation-*
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant-*
>
> > *(a) in a summary trial or summon case, where the drawer pleads not guilty to the accusation made in the complaint; and*
> >
> > *(b) in any other case, upon framing charges.*
>
> *(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.*
>
> *(3) The interim compensation shall be pad within sixty days from the date of the order under sub-section (1), or within such further*

period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a find under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974)."

6. The trial must be a summary trial or a summons case, the notice or charge must be framed, and the petitioner must have pleaded not guilty. These are the crucial requirements that must be met before directing interim compensation. As a result, the criteria of Section 143A of the NI Act are established beyond a reasonable doubt.

7. In ***Surinder Singh Deswal & Ors. Vs. Virender Gandhi & Anr.*** **(2020) 2 SCC 514,** the Hon'ble Supreme Court held that Section 148 NI Act used the word "*may*" is generally to be construed as a rule as "shall" and not as an exception for which the Court has to assign special reasons for directing interim compensation.

8. In view of the discussion hereinabove, this Court does not deem fit to issue notice to the respondent and prayers are untenable in law. Without going into the merits of the case, the petition is dismissed and the orders dated 18.10.2022 and 11.01.2023 are upheld.

RAJNISH BHATNAGAR, J

MARCH 06, 2023/ib