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2024:PHHC:010049

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3344-2024
DECIDED ON: 22.01.2024

NACHHATTAR SINGH

.....PETITIONER

VERSUS

U.T. CHANDIGARH AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in NACT Complaint No.8634 dated 01.08.2017 under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act 1881').
2. Mr. Rajiv Kataria, learned counsel for the petitioner submits that during the pendency of the complaint under Section 138 of NI Act, 1881, the petitioner-accused could not put in appearance on 21.07.2022, since it was a day of heavy rain and he moved an application for exemption from personal appearance on website/e-mail of the District Court, Chandigarh.
3. The Judicial Magistrate 1st Class, Chandigarh without considering the factual aspects declined the exemption application on 21.07.2022 and once the petitioner alongwith his counsel appeared on the next day, they came to know about the issuance of non-bailable warrants for 23.08.2022.

4. He thereafter approached the Court of Additional Sessions Judge, Chandigarh seeking anticipatory bail, which has been declined, though no reasoning has been recorded and, therefore, the order dated 22.09.2022 passed by Additional Sessions Judge, Chandigarh is cryptic.

5. Mr. Rajiv Kataria, learned Advocate for the petitioner has drawn attention of this Court to subsequent zimni orders passed by the Judicial Magistrate 1st Class, Chandigarh attached at Annexure P-9 to P-15, wherein the Presiding Officer had been on leave for one or the other reason and, therefore, the petitioner could not surrender and move appropriate application in a bailable offence i.e., for not appearing on 21.07.2022 before the trial Court as an accused in aforesaid complaint.

6. Thereafter, a reference has been made to an order dated 30.09.2023, which records that proclamation was earlier issued, but not received back and the same was ordered to be issued afresh to ensure the presence of the petitioner-accused for 07.10.2023 requiring the petitioner to appear on or before 10.11.2023. Subsequently, last order dated 12.01.2024 also depict that the file was taken up on 12.01.2024 instead of 17.01.2024, as 17.01.2024 is declared holiday on account of birthday of Sri Guru Gobind Singh Ji and since the Presiding Officer was to avail casual leave from 15.01.2024 and 16.01.2024 and adjourned the matter on 22.01.2024.

7. This Court has perused the order dated 21.07.2022, wherein the absence of the petitioner-accused is not on an isolated occasion i.e., 21.07.2022, but on multiple occasions that too by moving an application on website or e-mail of the trial Court and on 01.07.2022, the petitioner-accused stated before the trial Court that he is in contact with earlier counsel and sought time to make alternate

arrangement and on such request, the case was adjourned by the trial Court to 21.07.2022.

8. This Court also cannot loose sight of the fact that on perusal of the order dated 21.07.2022, despite all the endeavours made till that date on one or the other ground, the petitioner is habitual of seeking exemptions from appearance, whereas this case comes within the category of oldest pending case and is part of action plan 2022-23, which is pending since the year 2017.

9. However, in furtherance of justice, without commenting upon the conduct of the petitioner at this stage with the sole reason that the trial has to be concluded after providing all possible opportunities to the petitioner-accused, who undertakes before this Court to cooperate and associate in future, the prayer is acceded to and the petitioner is directed to surrender before the trial Court within a period of ten days from today and in case, he moves any application for bail or any such application still pending, the same shall be considered and disposed of on that very day of surrender of the petitioner-accused in accordance with law.

10. However, the aforesaid order shall be subject to payment of Rs.10,000/- as cost with Punjab & Haryana High Court Bar Association, a receipt of which shall be produced before the trial Court at the time of surrender.

11. In view of the aforesaid terms, the petition stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

22.01.2024

Meenu

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