



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CRM-M-53382-2024 (O&M)

Date of decision : 04.11.2024

Yasmin Bano

...Petitioner

Versus

BPC Technologies India Pvt. Ltd.

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sanjeev Chaudhary, Advocate
for the petitioner.

MANISHA BATRA, J.(Oral)

1. CRM-42576-2024

Allowed as prayed for.

Leave granted.

2. CRM-M-53382-2024 (O&M)

The present petition has been filed by the petitioner under Section 528 of BNSS, 2023 seeking quashing/modification of order dated 07.09.2024 (Annexure P-2), passed by the Judicial Magistrate First Class, Gurugram in case titled as *M/s BPC Technologies Pvt. Ltd. vs. Yasmin Bano*, whereby while granting concession of bail to the petitioner, learned trial Court has imposed a condition upon the petitioner to furnish personal bond in the same of Rs. 1,00,00,000/- and one surety in the like amount.

3. Learned counsel for the petitioner has submitted that the petitioner is facing trial in the aforesaid case, which has been filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881

alleging that the petitioner, being proprietor of M/s Pragati Sales, had issued a cheque to tune of Rs. 10,64,95,402/- to the respondent in discharge of her legally enforceable debt but on presentation of the same before the banker of the respondent, it was returned with the remarks “payment stopped by drawer”. On filing of the aforesaid complaint, summons were issued by the trial Court against the petitioner. The petitioner appeared before the trial Court through her counsel on 23.07.2024 and moved an application for exemption of her personal appearance but the same was dismissed, vide order dated 23.07.2024. The petitioner then challenged the said order by filing a petition before this Court, which was disposed of on 29.08.2024 with a direction to the petitioner to surrender before the trial Court within a period of 04 weeks and on surrender, the trial Court was directed to admit her to bail on furnishing personal/surety bonds to its satisfaction. In compliance with the said order, the petitioner appeared before the trial Court and was admitted to bail, subject to furnishing personal bond to the tune of Rs. 1,00,00,000/- and a surety in the like amount, vide impugned order dated 07.09.2024. The petitioner has furnished the personal bonds in the sum of Rs.1,00,00,000/- but she could not arrange surety in the like amount.

4. Learned counsel for the petitioner has argued that the aforesaid condition is excessive, arbitrary and unreasonable, especially when the offence itself is bailable. The trial Court has not given any specific reasoning for subjecting the petitioner to furnish bonds to the extent of such huge amount. It is further argued that the condition imposed by the trial Court in the bail order is contrary to the mandate of Section 484 of BNSS, 2023 (*which is pari materia with Section 440 of Cr.P.C.*), which expressly states that bail amount shall be fixed with due regard to the circumstance of the

case and shall not be excessive. Hence, it is urged that the petition deserves to be allowed and the impugned order deserves to be modified, thereby reducing the amount of surety to a reasonable amount.

5. I have heard learned counsel for the petitioner at considerable length and have gone through the material placed on record.

6. Admittedly, the petitioner is facing trial in the aforesaid complaint filed under Section 138 of the N. I. Act. She has appeared before learned trial Court in compliance with a direction of this Court given in a petition, which was filed by her challenging the order whereby her application seeking exemption from personal appearance was dismissed by learned trial Court. On appearance, she was admitted to bail by the trial Court, on furnishing personal bond in the sum of Rs. 1,00,00,000/- but she could not arrange a surety in the like amount as directed by the trial Court, which according to petitioner is excessive, arbitrary and contrary to the settled law. The practice of grant of bail is an exercise of judicial discretion by the Court based on consideration of several factors and imposition of bail condition is also a part of such exercise, which should be based on sound judicial principles. It should not be arbitrary, mechanical or onerous, which could not be complied with by the accused as it would be like granting bail by one hand and taking it away by another hand. Rather, imposition of onerous and stringent conditions amounts to denial of bail. Obviously, the object of bail is to enable the accused to send him out of jail with an assurance to return to the Court to put up an effective defence. Learned counsel for the petitioner has rightly made reference to Section 484 of BNSS, 2023 (*which is pari material with Section 440 Cr.P.C.*), according to which, the bond amount should not be excessive. Reliance can be placed

upon *Sagayam @ Devasagayam vs. The State of Tamil Nadu : 2017 (3) CTC 291*, wherein similar observations were made by the Madras High Court. Similarly, in *Satender Kumar Antil vs. Central Bureau of Investigation and another : (2022) 10 SCC 51*, Hon'ble Supreme Court has observed that the amount of every bond is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed should not be mechanical and uniform in all cases. It is a mandatory duty of the Court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Reference can also be made to the authority cited as *Guddan @ Roop Narayan vs. State of Rajasthan : 2023 (1) RCR (Criminal) 762*, whereby the Hon'ble Supreme Court while reiterating the judicial concern against fixation of excessive conditions which tantamount to refusal to grant bail has made similar observations.

6. In view of the discussion as made above, this Court is of the considered opinion that the condition imposed by the trial Court upon the petitioner while granting bail is excessive and onerous and the same needs to be modified in order to enable the petitioner to comply with it. Accordingly, the present petition is disposed of, modifying the impugned order dated 07.09.2024 to the extent that the petitioner shall be admitted to bail, subject to her furnishing surety bond in the sum of Rs. 10,00,000/- (Rupees Ten Lakhs) only.

04.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No