

2024:PHHC:146850



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

Sr. No.126

**CRM-M-56189-2024 (O&M)
Date of decision : 11.11.2024**

Jatinder Kumar

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Ritesh Pandey, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

1. Prayer in the present petition under Section 528 of BNSS, 2023 is for quashing of the order dated 15.03.2024 (Annexure P-2), vide which the petitioner has been declared as proclaimed person in a criminal complaint filed under Section 138 of Negotiable Instruments Act bearing No.NACT/374/2022 dated 03.12.2022 titled as 'Kaliash Nath Gogna Vs. Jatinder Kumar' pending in the Court of learned JMJC Dasuya.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He submits that a false complaint was filed against the petitioner under Section 138 of the Negotiable Instruments Act on the allegations that the petitioner has approached the complainant and purchased silver ornaments amounting to Rs.2,28,000/- and gave Rs.28,000/- in cash and also gave a cheque worth Rs.2,00,000/- and on presentation of cheque, the same was bounced. He further submits that the petitioner was not aware about the pendency of the case and thus, he was wrongly been declared as proclaimed person by the learned trial Court. He

further submits that the petitioner was not served due to change of his

2024:PHHC:146850



residential address. Thus, the mandatory provisions of Section 82 of Cr.P.C. have not been complied with and the petitioner is ready to appear before the trial Court and abide by all the terms and conditions imposed upon him by the trial Court.

3. Notice of motion to the official respondents at this stage.

4. At asking of the Court, Mr. Vinay Kumar, DAG, Punjab, accepts notice on behalf of respondent No.1-State and has opposed the present petition. He submits that the trial Court has correctly passed the order dated 15.03.2024 (Annexure P2) against the petitioner.

5. Heard the rival submissions made by learned counsel for the parties.

6. The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner was not served in compliance of mandatory provisions of Section 82 Cr.P.C. as the non-bailable warrants and proclamation were not executed at the residential address of the petitioner due to which he could not appear before the trial Court and on account of the same, he has been declared as proclaimed person. The petitioner is ready to appear before the trial Court and face the trial.

2024.PHHC:146850



8. This Court finds that no useful purpose will be served by sending the petitioner in custody. Accordingly, the present petition is allowed and order dated 15.03.2024 (Annexure P2) is hereby set aside **subject to payment of cost of Rs.10,000/- by the petitioner to be deposited with the Poor Patient Welfare Fund, PGIMER Chandigarh** within a period of 15 days from today. The petitioner after depositing the cost as stated above would appear before the trial Court concerned on the next date and file appropriate application along with receipt of payment of cost. The trial Court would release the petitioner on bail to its satisfaction. No coercive action would be taken against the petitioner till the next date. In case, the petitioner failed to appear before the trial Court or failed to deposit the cost as stated above, this order would be of no avail to the petitioner.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

11.11.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No