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

% *Date of decision: 14th January, 2025*

+ **CRL.M.C. 1866/2021 & CRL.M.A. 12832/2021**

RAHUL JAIN

House No.-III, E-10, Block-E,
Nehru Nagar, Ghaziabad,
Uttar Pradesh-201001.

.....Petitioner

Through: Mr. Shantanu Chaturvedi, Advocate
through VC.

versus

M/S YES BANK LIMITED

Nehru Centre, 9th Floor,
Discovery of India, Dr. A.B. Road, Worli,
Mumbai-400018.

Branch Office at :
5A/15, Tilak Nagar,
Near Subhash Nagar Metro Station
Tilak Nagar, Delhi-110018.

.....Respondent

Through: Ms. Ruchika, Proxy Counsel for Mr.
Rajat Katyal, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under *Section 482* of the *Criminal Procedure Code, 1973* read with *Section 440* has been filed on behalf of the Petitioner against the



Order dated 06.03.2021, whereby the learned ASJ has reduced the surety amount from Rs.50 lakhs as fixed by the learned Metropolitan Magistrate, to Rs.25lakhs, to seek further reduction in Surety Amount.

2. The Petitioner has submitted that a Complaint under *Section 138 of N.I. Act* was filed by the Respondent Bank against him for dishonour of Cheque dated 22.05.2019 in a sum of Rs.5 crore. The Petitioner was summoned and was directed to appear before the Court on 07.01.2020.

3. The Petitioner was unable to appear and the matter was adjourned for 22.01.2020. The copy of the Complaint was supplied and on the same day, Notice under *Section 251 of Cr.P.C* was framed to which he pleaded not guilty.

4. The learned Court granted bail to the Petitioner on furnishing a Personal Bond in the sum of Rs.50 lakhs along with one Surety Bond of the like amount till the next date of hearing i.e. 12.02.2020. It is asserted that this condition of furnishing Surety Bond in the sum of Rs.50 lakhs was onerous. Consequently, he moved an Application under *Section 440 of Cr.P.C.* before the learned ASJ who reduced the amount to Rs.25 lakhs.

5. The Petitioner has assailed the Order by observing that even Rs.25 lakhs is excessive and onerous. He is a permanent resident of this country and is residing in Ghaziabad with his family. He does not have financial capacity to furnish the Surety Bond to the tune of Rs.25 lakhs.

6. Reliance has been placed on the judgment of High Court of Delhi on its own Motion Vs. Central Bureau of Investigation [109 (2003) DLT 494], wherein directions have been issued to the Criminal Courts that while fixing the amount of Bail Bond or Surety Bond, it should never be excessive and



must be fixed taking into consideration the financial condition, nature of offence and other conditions as excessive amount of Bond which a person is not in a position to furnish, amounts to denial of Bail and conversion of bailable offence into a non-bailable one.

7. Reliance has also been placed on *Hameed Mansoor vs. State*, 2017 SCC OnLine Mad 32864, wherein the Madras High Court observed on similar lines that the amount of bond under *Section 440* of *Cr.P.C.* should not be excessive and in case of the accused not being able to furnish the same, then under *Section 445* of *Cr.P.C.* the accused has an option to offer cash security.

8. Therefore, it is submitted that this Court may exercise its discretion under *Section 482* of *Cr.P.C.* and reduce the surety amount.

9. ***Learned counsel for the Respondent*** has submitted that the cheque amount which got dishonoured was of Rs. 5 crores, which had been issued in lieu of a loan which had been taken by the Petitioner. He has sufficient financial capacity and there is no ground for reduction in the amount of Surety Bond.

10. **Submissions heard.**

11. The Surety Bond amount was directed to be furnished in the sum of Rs.25 lakhs *vide* Order dated 06.03.2021 of the learned ASJ, despite which the Surety Bond has not been furnished till date on the premise that the Petitioner does not have sufficient financial capacity.

12. *Chapter XIII of Code of Criminal Procedure, 1973 is self contained dealing with Bail and bail bonds.* While granting bails, the Courts have powers to impose conditions with the view to ensure the availability of the



accused during investigation and during trial of the case and is not intended to harass the accused persons. Imposition of bail condition is part of such exercise of grant of Bail, which is based on same principle and there can be no arbitrary or mechanical imposition of bail condition, which may be so onerous that the bail granted becomes a paper relief, not translated to a reality for the accused. In terms of Section 440 Cr.P.C. the bond amount should not be excessive or arbitrary.

13. The Apex Court in the case of Hussainara Khatoon Vs. State of Bihar (1980) 1 SCC 81, while considering that persons who are languishing in Jail for years for offences which might ultimately be found to not have been committed, observed that it was nothing but denying human rights of such languishing persons. It noted that Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code, where an accused is to be released on his personal bond. It insisted that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, the courts mechanically and as a matter of course, insist that the bond should contain monetary obligation, requiring to pay a sum of money in case it fails to appear at the Trial. Moreover, the Courts mechanically as a matter of course insisted that the accused should produce Sureties who will stand bail for him; these sureties must again establish their solvency to be able to pay the amount in case the accused fails to answer the Charge. This system of Bails operates harshly against the poor and it is only the non-poor who are able to get themselves released on bail. The poor find it difficult to furnish bail even with or without sureties because very often the amount of the bail



fixed by the Courts is so unrealistic that in a majority of cases, the poor were unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and it was almost impossible for the poor to have a Surety.

14. This system led to grave consequences, namely, though presumed innocent, they are subjected to psychological and physical deprivations of jail life; were prevented from contributing to the preparation of their defence; they lost their job, if they have one; are deprived of an opportunity to work to support themselves and their family members. The result was that the burden of their detention almost invariably fell heavily on the innocent members of the family.

15. It was further noted that in the first place, it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing, is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one.

16. It is no doubt true that the Magistrate has broad discretion in fixing the amount of bail but in practice it seems that the amount of bail depends almost always on the seriousness of the offence. It is fixed according to a schedule related to the nature of the charge. Little weight is given either to the probability that the accused will attempt to flee before his trial or to his individual financial circumstances, the very factors which seem most relevant if the purpose of bail is to assure the appearance of the accused at the trial. *The result of ignoring these factors and fixing the bail amount*



mechanically having regard only to the seriousness of the offence, is to discriminate against the poor who are not in the same position as the rich as regards capacity to furnish bail.

17. President Lyndon B. Johnson at the time of signing the Bail Reforms Act, 1966, observed thus:

“the defendant with means can afford to pay bail and buy his freedom.

But poorer defendant cannot pay the price and he languishes in jail for weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only because he is poor....”

18. In Hussainara Khatoon (Supra), it was further observed that the amount of bail bond/ surety bond should be based merely on the nature of Charge. It should be individualized depending upon individual circumstances of the accused and the probability of his absconding.

19. In the case of Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66, the Apex Court has held that any bail condition which is onerous, is against the law. Similar observations have been made by the Apex Court in Ramathal & Others Vs. Inspector of Police and Another (2009) 12 SCC 721 has observed that bail conditions must not be excessive or oppressive. In P.Navneetha Krishnan Vs. The Commissioner of Police,



Villore Habeus Corpus Pet. No. 1306/2007 decided on 21.09.2007 the Madras High Court noted that the conditions of bail which are of such a nature which cannot be complied by the accused, would be like granting bail by one hand and taking it away by another hand.

20. Similar are the observations made in the case of Hameed Mansoor(supra) and High Court of Delhi on its own Motion Vs. Central Bureau of Investigation, relied upon by the Petitioner.

21. It may thus, be observed that the primary objective of seeking a Bail Bond/ Surety Bond is to ensure the presence of the Petitioner during the trial, and not to secure the disputed amount. It is the soundness of surety and his control over the Petitioner which are the relevant considerations.

22. In these circumstances, the amount of Surety Bond is reduced to Rs.10 lakhs and the learned Metropolitan Magistrate may ascertain the soundness of the Surety while accepting the Surety Bond.

23. The Petition is accordingly disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 14, 2025

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