



\$~73

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 8512/2025, CRL.M.A. 35562/2025 & CRL.M.A.
35563/2025
KAVITA BHALLAPetitioner

Through: Mr. Nitesh Kumar Singh, Mr.
Devender Singh, Advocates.

versus

TGB PVT LTD & ORS.Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
01.12.2025

%

1. This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 482 of the Code of Criminal Procedure, 1973²) assails order dated 05th October, 2024, in Complaint Case No. 1722/2016, whereby Petitioner's application under Section 143 of the Negotiable Instruments Act, 1881 has been dismissed.
2. The Complainant states that she booked an apartment on 01st April, 2016 in the project 'TGB Neelgagan' and paid INR 30,00,000/- through four cheques. She was assured a special fixed-return scheme, pursuant to which an MOU was executed on 01st April, 2016 and an allotment agreement on 16th April, 2016. Under this arrangement, two post-dated cheques of INR 15,00,000/- each were issued to her, payable after 24 months. The accused Company allegedly failed to honour the assured return.

¹ "BNSS"

² "Cr.P.C."



3. The Complainant then demanded payment as per the MOU. The accused issued a fresh cheque for INR 30,00,000/- and retrieved the earlier two cheques. Upon presentation, the cheque was dishonoured for insufficiency of funds. Statutory notice was issued, and on failure of payment, the underlying complaint filed for the offence under Section 138 of the Negotiable Instruments, Act, 1881.

4. Summons were issued on 11th February, 2019. The accused appeared on 02nd May, 2019, and notice under Section 251 Cr.P.C. was served. The accused admitted issuance of the cheque but pleaded not guilty.

5. The Complainant thereafter moved an application seeking interim compensation. Upon hearing both sides, the Trial Court dismissed the application. The relevant portion of the order is reproduced below:

“9. It is a settled position of law as held by the Honble High court of Delhi in M/S JSB Cargo and Freight Forwarder pvt. Ltd. & Ors. V. State and Anr. CRL.M.C.2663/2021 that the power of the court to grant interim compensation under section 143A is directory and not mandatory. This discretionary power is to be exercised depending on the facts and circumstances of each case. As provided in the statement of objects and reasons to the NI 2018 Amendment Act, due to the delay tactics adopted by unscrupulous drawers of cheques, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque.

*10. The factors to be considered while exercising this discretion were recently summarised by the Hon’ble Supreme Court of India in **Rakesh Ranjan Shrivastava v. State of Jharkhand [2024] 3 S.C.R. 438**, which are as under:*

“..... When the court deals with an application under section 143A NI act, the court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of section 143A. The presumption under section 139 of the NI Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the



complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the court concludes that a case is made out for grant of interim compensation, the court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors.”

11. Further, the Hon'ble High Court of Delhi in **Ajay Tyagi v. B9 Beverages CRL.M.C. 6586/2022** also enumerated certain factors to be considered while exercising this discretionary power and the same are reproduced as under:

“.....It is however evident from the analyses made in these decisions that the learned MM has to apply its mind in granting interim compensation under Section 143A and assess the conduct of the accused and should pass such orders only after hearing the accused. Lack of cooperation in the proceedings has been considered as an important and critical factor for the learned MM to lean towards granting interim compensation. Instances have been culled out in these decisions which should potentially be taken into account, inter alia absconson of the accused from the proceedings resulting in protraction of proceeding; intentionally evading service for a long time; availability of material which prima facie has not been satisfactory denied by the accused; securing the presence of the accused by non-bailable warrants; seeking of unnecessary adjournments. As stated earlier this list is not exhaustive but only indicative of the factors which could be considered in exercising discretion.”

12. The complaint and documents annexed with the same are sufficient to raise a presumption under section 139 NI Act in favour of the



complainant, however, the said presumption is a rebuttable one. To rebut the same, the accused persons have taken their plea of defence as recorded in their notice under Section 251 Cr.P.C.

13. Further, the defence of the accused also suggests there was a transaction between the parties. While the accused has admitted that there is a legal liability towards the complainant, they have taken the plea that the cheque in question was issued to the complainant pursuant to their understanding that the same was to be presented once the case pending in Hon'ble High Court of Delhi gets concluded.

14. After going through the judicial record, considering the arguments made as well as the judgments cited by the parties, the primary factor while deciding the present application is the conduct of the accused as the purpose of Section 143-A NI Act is to prevent any such substantial delay caused by the accused. Perusal of the record also shows that the accused persons appeared after the summons were issued to them. Warrants were not issued to ensure their presence as they appeared on the second date itself. Further, after going through the ordersheets, it is apparent that the accused persons have been present on most of the dates apart from the period of COVID-19 pandemic. The record further reveals that the conduct of the accused persons cannot be said to be dilatory in nature, as presence of all accused was secured easily. Therefore the complainant cannot be said to be prejudiced or harassed in any manner during the course of trial. It is also pertinent to point out herein that the complaint is currently at the stage of defence evidence and would be disposed off expeditiously after conclusion of the next stage of final arguments.

15. In view of the aforesaid circumstances, this court is of the view that there are no pressing grounds raised by the complainant to warrant the exercise of the discretion of this court in favour of granting interim compensation.

16. Accordingly, the application under section 143 A stands dismissed.

17. Nothing expressed herein shall affect the merits of the case and the opinion given herein is just only to decide the present application.

18. Copy of the order be given dasti to the both parties, as prayed for."

6. Counsel for the Petitioner contends that the impugned order fails to appreciate the facts and circumstances of the case. It is submitted that the complainant has a *prima facie* case, as the Respondents have admitted that the cheque in question bears their signatures, and was issued towards a legal liability arising from the apartment booking. It is argued that despite this admitted position, the Trial Court has not indicated how the Complainant



failed to satisfy the threshold for grant of interim compensation under Section 143A.

7. The Court has considered the aforementioned contentions. Section 143A NI Act vests a discretionary power in the Trial Court to award interim compensation, which may be exercised upon a *prima facie* evaluation of both the complainant's case and the defence, as clarified by the Supreme Court in ***Rakesh Ranjan Shrivastava v. State of Jharkhand***.³ The presumption under Section 139 NI Act, being rebuttable, does not by itself justify an order under Section 143A. The Court is required to consider several factors, including the nature of the transaction, the defence set up by the accused, their conduct in the proceedings and their financial capacity.

8. The Trial Court has duly taken these considerations into account. It recorded that the accused appeared promptly upon issuance of summons, no coercive process was required to secure their presence, and their conduct during trial was not dilatory. The Trial Court also noted that the matter stood at the stage of defence evidence and was likely to be concluded expeditiously, thereby negating any allegation of delay or prejudice caused by the accused. In these circumstances, the Trial Court's decision declining to exercise discretion in favour of interim compensation cannot be said to suffer from perversity or non-application of mind, warranting interference under Section 528 BNSS. The Court finds no merits in the present petition.

9. Accordingly, the present petition is dismissed along with pending application(s).

SANJEEV NARULA, J

DECEMBER 1, 2025/ab

³ 2024 INSC 205