

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Sanjay Vashisth****Date of Decision: October 26, 2023**

CRM-M-54489-2023

Kulwant Singh . . . Petitioner(s)**Versus****State of Punjab and another . . Respondent(s)****Sections, Acts, Rules, and Articles:**

Section 438 Cr.P.C. (Criminal Procedure Code)

Section 138 of the Negotiable Instruments Act, 1881 (NI Act)

Section 174 of the Indian Penal Code (IPC)

Subject: Anticipatory Bail in a case where the petitioner has been declared a 'proclaimed offender' under Section 138 of the Negotiable Instruments Act, 1881.**Headnotes:**

Anticipatory Bail – Petitioner declared 'proclaimed offender' in a non-cognizable offence under Section 138 of the Negotiable Instruments Act, 1881 – Petitioner's plea for anticipatory bail – Non-receipt of notice and warrants by the petitioner – Desire to join proceedings and appear before the Court – Request for protection from arrest – Offer to furnish an undertaking – Grant of anticipatory bail with certain conditions. [Para 1-5]

Service of Notice – Dispensation of service of notice upon respondent No.2 due to the monetary nature of the dispute and the petitioner's absence hindering trial proceedings – Paramount consideration of securing the accused's presence – Avoidance of unnecessary wastage of time and energy in running after accused persons – Direction for the petitioner to appear before the Trial Court. [Para 7-10]

Conditions of Bail – Petitioner to appear before Ld. Trial Court on or before 09.11.2023 – Release on bail subject to furnishing bail bonds/surety bonds – Deposit of Rs.20,000/- for the benefit of Poor Patients' Treatment – Submission of an undertaking to ensure future appearances during trial proceedings. [Para 11-13]

Referred Cases: None.

Representing Advocates:

Ms. Khushika Setia, Advocate for the petitioner.

Mr. C.L. Pawar, Addl. AG, Punjab, for respondent No.1 – State.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Kulwant Singh, aged 56 years, has filed instant petition under Section 438 Cr.P.C., for seeking concession of anticipatory bail, because, he has been declared '**proclaimed offender**' for his non-appearance in bailable & non-cognizable offence arising from complaint case bearing No. COMA-1333-2013, dated 27.05.2013, titled as, "Karamjit Kaur vs. Kulwant Singh", under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act'), registered before Ld. JMJC, Rajpura.
2. Learned counsel for the petitioner submits that for an amount of Rs.3.00 lakhs, one cheque issued by the petitioner got bounced resulting into the filing of the complaint under Section 138 of the NI Act at the instance of respondent No.2.
3. Learned counsel for the petitioner further contends that petitioner never received any notice in the complaint. Even, the bailable and non-bailable warrants were also never served upon the petitioner. Thus, having no knowledge of the pendency of the complaint, he could not appear before the Court, though, there was no such intention to run away from the process of law.
4. On being asked by the Court, Ms. Khushika Setia, learned counsel for the petitioner, informs this Court that as per information received by her telephonically, after declaring the petitioner as '**proclaimed offender**' vide order dated 16.11.2015; till date, no case under Section 174 of IPC, has been registered against the petitioner. Thus, he expresses his desire to join the

proceedings and to appear before the Court below at the earliest to avoid unnecessary hassle or harassment in that regard. She further submits that subject to the imposition of some costs amount, if petitioner is granted one chance of his appearance, by protecting his arrest, he would furnish an undertaking also before the Trial Court that in future except prior permission of the Court, he would never remain absent from Court proceedings.

5. Notice of motion.

6. On asking of the Court, Mr. C.L. Pawar, Addl. AG, Punjab, who is present in Court, accepts notice on behalf of respondent No.1 – State.

Copy of the complete paper book has already been supplied to learned State counsel.

7. So far as, service *qua* respondent No.2 is concerned, this Court is of the view that since the dispute is monetary in nature, and petitioner's absence from the Court, has created a hurdle in conducting the trial, initiated by respondent No.2, under Section 138 of NI Act; for the purpose of disposal of present petition, service of notice upon respondent No.2 is dispensed with, at this stage.

8. After going through the petition, copy of which has already been supplied to learned State counsel, he points out that keeping in view the facts and circumstances of the case, petitioner deserves no leniency, and rather, should be dealt with sternly in accordance with law.

9. Heard.

10. Be that as it may, paramount consideration of the Court is to secure presence of accused, so that the version of the complainant/prosecution is taken to the logical end by following the process of law. Already Courts are flooded with so much litigations, resulting in slow pace of work, because of more than one reason. By issuingailable warrant or non-ailable warrants or proclamation orders, nothing material is achieved by anybody or even the prosecution agency, except of wastage of time and energy. The required energy and manpower shall be used for expediting the proceedings of the Court, instead of running after the accused persons to get hold of them.

11. Thus, taking into consideration the prime purpose i.e. securing the presence of the accused, present petition is **disposed of** with a direction to the petitioner to appear before Ld. Trial Court on or before 09.11.2023. On his appearance, he would be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Ld. Trial Court.
12. However, it is made clear that the concession of order of release on bail would be subject to the deposit of an amount of Rs.20,000/- to be deposited with the account meant for Poor Patients' Treatment or any other such account run by General Hospital/Government Hospital/Civil Hospital in Rajpura.
13. Besides, petitioner would submit specific undertaking/affidavit that he will keep appearing during the proceedings of the trial in future and the proceedings would not be delayed because of his conduct.

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