

**IN THE COURT OF GIRISH, JUDGE, ADDITIONAL SESSIONS
JUDGE, SANGRUR.
(UID NO. PB00180).**

CNR No. PBSG-005773-2021.

BA/CIS no. 1740/2021.

BA No.3889/2021.

Date of Order: 03.06.2021

1. Navjot Singh Boparai aged 30 years S/o Sh. Sukhbir Singh, R/o House no.663, Prabhu Prem Puram, Khojkipur Ambala Cantt, Haryana Prop. M/s Boparai Enterprise.
2. M/s Boparai Enterprise through its Proprietor Navjot Singh Boparai aged 30 years S/o Sh. Sukhbir Singh R/o House no.663, Prabhu Prem Puram, Khojkipur, Ambala Cantt, (Haryana).

.....Petitioners.

Versus

M/s Thind Cement Store, near bus stand, Tohana Road, Moonak, District Sangrur, through its proprietor Harnam Singh.

....Respondent / Complainant.

Application U/s 438 Cr.P.C for grant of anticipatory bail

(Complaint U/s 138 of Negotiable Instrument Act, 1881 titled as 'M/s Thind Cement Store Vs. Navjot Boparai).

Present: Sh. P.S.Rattan, Advocate, Counsel for applicants / accused.

Sh. S.P.Sharma, Advocate Counsel for respondent / complainant.

ORDER :

1. This order of mine shall dispose of an **anticipatory bail application U/s 438 Cr.P.C** filed on behalf of applicants / accused, as detailed in head note of the bail application.

2. Notice of the bail application was issued to the respondent, upon which, Ld. counsel has appeared.

3. The record of Ld. Trial Court was requisitioned and perused.

4. I have heard ld. counsel for applicants / accused, ld. counsel for respondent and have scrutinized the record with their able assistance.

5. From the record of ld. Trial Court, it has come to surface that applicant / accused was ordered to be summoned vide order dated 10.11.2015, U/s 138 of Negotiable Instrument Act, on account of cheque issued by him for an amount of Rs.5,00,000/- in favour of complainant, which was dishonored on account of 'Funds Insufficient'. In pursuance thereof, legal notice dispatched on 01.10.2015 was served and the applicant / accused has failed to make payment within stipulated period.

6. From the ld. Trial Court record, it has further come to surface that, initially, presence of applicant / accused was tried to be procured through bailable warrants, but subsequently, applicant / accused was ordered to be summoned through non-bailable warrants due to evading of his service and ultimately, proclamation against accused was issued vide order dated 22.02.2019.

7. Perusal of ld. Trial court further reveals that applicant / accused was declared Proclaimed Person vide order dated 12.09.2019. It is submitted that proclamation has been issued without inquiring as to why summons, bailable warrants and non-bailable warrants had not been executed by the police or 'dasti' as directed by ld. Trial court. It is further submitted that the applicant / accused shall abide by all terms and

conditions imposed by the Court. It is observed that applicant / accused has already misused the process of law for almost about four years. Although the offence U/s 138 of Negotiable Instrument Act is bailable in nature. In view of bailable nature of offences, I am also supported by the law laid down by Hon'ble Punjab and Haryana High Court in case titled as "**Hardev Singh @ Debu Vs. State of Punjab reported in 2011 (2) RCR (Criminal) 471 (P & H)**". It has been held that "wherein accused was declared Proclaimed Offender in an offence U/s 323 and 324 IPC, which are bailable offences and the accused sought anticipatory bail as the accused had apprehension of being sent to jail before his bail application was considered. In that case, it was held that the apprehension of accused is misconceived and he was directed to surrender before the Magistrate."

8. Further, I am supported with CRM-M 35943-2019 (O & M) and CRM-M-33867-2019 (O & M). D/d 1212-2019 titled as **Rohit Joshi and another Vs. State of Punjab and other**, wherein, upon intention of bail applicant to contest the case / complaint U/s 138 of Negotiable Instrument Act, he was directed to deposit a sum of Rs. 1,00,000/- with the Trial Court subject to final outcome of the case, his bail application was allowed.

9. However, Ld. Trial / Duty Magistrate is also directed to consider the clause (viii) of CWP-PIL-77-2021 titled as **Court of its own motion Vs. Union of India** decided by our own Hon'ble High Court, wherein, it has been directed that unless there is necessity of arrest for maintenance of law and order or any other emergent case, in a cognizable offence prescribing sentence upto 7 years imprisonment, the police shall

desist from arresting the accused upto 30th of June, 2021, without complying with the provision of Section 41 (A), Cr.PC.

10. Admittedly, the offence in this case, in which, applicant / accused is seeking anticipatory bail, is also bailable. Thus, in view of law laid down by our own Hon'ble High Court, present application for anticipatory bail is hereby **dismissed** being non maintainable, as the offence is bailable.

The observation made by the under-signed in the order, will have no bearing on the merits of the case. The Id. Trial Court record be returned and bail application be consigned to the record room.

Pronounced in open Court.

Dt.03.06.2021.

Veena Saluja,
Stenographer Gr.I.

Girish,
Additional Sessions Judge,
Sangrur.UID-PB00180.