

BA 1927 of 2022 Subhash Chander & another versus Rachit Singla & Co.
CNR No. PBFZC0-004520-2022

Present: Shri Manoj Kalwa Advocate counsel for applicants-
accused.
Shri Sarabjeet Singh Advocate counsel for respondent-
complainant.

This order of mine shall dispose of application for anticipatory bail moved by the applicants/accused Subhash Chander & Ajay Kumar in a complaint case for offence U/S 138 of Negotiable Instruments Act, wherein, the applicants-accused have been declared 'Proclaimed Persons' vide order dated 29.09.2021 passed by the Trial Magistrate.

2. Notice of the same was given to the respondent-complainant. Shri Sarabjeet Singh Advocate put appearance on behalf of respondent-complainant and contested the bail application. Record of the Learned Trial court was also called.

3. The learned counsel for applicants/accused has submitted that in the present complaint, no process issued by the Hon'ble Court was ever received by the applicants-accused and as such, they were not having knowledge about pendency of the complaint and rather, a false complaint was instituted against them. He has further submitted that the applicants are ready to join the proceedings and in that facts and circumstances, they be granted the concession of bail in terms of section 438 Cr.P.C.

On the other hand, learned counsel for respondent-complainant has submitted that by not appearing before the Trial Court, applicants-accused have lingered on the proceedings of this case and as such, they are not entitled for anticipatory bail.

4. Having heard the submissions, I am of the view that the apprehension of the applicants/accused that in the event of surrender before the trial court, they will be sent to the judicial custody, pending bail

application is misconceived. Offence under section 138 of the Negotiable Instruments Act is bailable in nature and it is the right granted by legislature to a person/accused of an offence punishable with the offences, which are bailable in nature. Ld. counsel for the applicants/accused has submitted that the applicants-accused were declared Proclaimed Persons by the Court of learned Illaqa Magistrate, without ever putting appearance by them before the learned Court and as such, they have not misused the process of Court. Be that as it may be, proceedings of the learned Trial Court transpire that the accused-applicants were declared 'Proclaimed Persons' without ever putting appearance before the learned Trial Magistrate throughout the proceedings. Needless to say here that there are four modes available to the court to procure the presence of the accused. One is summons, second is bailable warrants, third is arrest warrants and fourth is to declare the accused as proclaimed offender. By adopting any one of the mode, it cannot change the nature of the offence. Admittedly, the offence, under which, accused/applicant has been summoned is of bailable nature. However, the court has adopted fourth option by declaring the applicants-accused as Proclaimed Persons, but, the fact remains that the applicant/accused is required in a case, which is bailable in nature. It is not a case of the complainant that at any given point of time, the applicants have misused the concession of bail. The Hon'ble High Court in a case titled as Hardev Singh @ Debu Vs State of Punjab, 2011(2) RCR(Cr.), 471, has held that "if a accused is declared proclaimed offender in an offence, which is punishable in nature, then, ordinarily, he should not be sent to jail, if he is ready to furnish bail bonds and surety bonds as per the directions of the trial court in a bailable offence."

5. In the present case, the applicants/accused have been declared 'Proclaimed Persons'. Thus, the application in hand, is dismissed. However, it is made clear that in the event of moving the bail application

by the applicants/accused before the trial court, then, the same shall be decided by the court concerned in accordance with law.

6. Copy of this order be sent to the trial court alongwith the record for information, whereas bail application file be consigned to the record room after due compilation.

Sd/-

Pronounced
Dated: 14.09.2022.

‘Bhola Shankar’
‘Stenographer Gr.I’

(Jatinder Kaur),
Sessions Judge,
Fazilka (UID No. PB0062)

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Present: Shri Manoj Kalwa Advocate counsel for applicants-
accused.

Upon notice, Shri Sarabjeet Singh Advocate put appearance on behalf of respondent-complainant and filed his *wakalatnama*. Record of learned Trial Court received. Heard. Vide my separate & detailed order of today, the bail application u/s 438 (1) Cr.P.C. applied on behalf of aforementioned applicants-accused has been disposed off, as recorded therein.

Bail application file be consigned to the Record Room,
Fazilka, after due compilation.

Sd/-

Pronounced
Dated: 14.09.2022.
'Bhola Shankar'
'Stenographer Gr.I'

(Jatinder Kaur),
Sessions Judge,
Fazilka (UID No. PB0062)