
(2021) 02 P&H CK 0367

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 3833, 4733, 4777 Of 2021,
41226, 41261, 41847 Of 2019

M/S Ajju Mines And Minerals And Another APPELLANT

Vs

M/S Jsc Ispat Private Limited And Another RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 148
Code Of Criminal Procedure, 1973 — Section 389(1), 438, 446, 482

Citation : (2021) 02 P&H CK 0367

Hon'ble Judges : Jasgurpreet Singh Puri, J

Bench : Single Bench

Advocate : Aditya Jain, Arav Gupta

Final Decision : Dismissed

Judgement

Jasgurpreet Singh Puri, J

Through Video Conference

This judgment shall dispose of a bunch of above noted six petitions in which the dispute is inter se between the petitioner M/s Ajju C.S. who is proprietor of a firm namely M/s Ajju Mines and Minerals Victor Palace, Mezzanine Floor Opposite Ambedkar Park, Patto, Panaji, Goa and M/s JSC Ispat Private Limited (formerly known as Jawala Steel Corporation).

Three petitions i.e. CRM-M-3833-2021, CRM-M-4733-2021 and CRM-M-4777-2021, are the petitions seeking anticipatory bail by the petitioner and these three cases of anticipatory bail are corresponding to the subject matter of other three quashing petitions i.e. CRM-M-41226-2019, CRM-M-41261-2019, and CRM-M-41847-2019, filed seeking quashing of order dated 23.5.2019 passed by the learned Additional Sessions Judge, Faridabad, whereby a condition was imposed to deposit 20% of the compensation amount under Section 148 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as 'the Act').

The total compensation amount in all these three similar cases comes to Rs.1,05,00,000/- approximately and all the three orders have been passed on 23.5.2019.

For the sake of convenience, the anticipatory bail petition i.e. CRM-M-3833-2021 and quashing petition i.e. CRM-M-41487-2019, are taken up for describing the facts of the case.

The petitioner was convicted by the learned trial Court under the provisions of Section 138 of the Act on 29.3.2019 for a period of one year and was also directed to pay compensation to the complainant to the tune of Rs.37,50,000/- for commission of offence punishable under Section 138 of the Act.

Thereafter, the petitioner filed an appeal before the learned Sessions Judge, Faridabad and vide order dated 23.5.2019, when the appeal was presented, it was directed that in view of the provisions of Section 148 of the Act (as inserted by Act No.20 of 2018 w.e.f. 1.9.2018) the appellant was directed to deposit 20% of the compensation amount in the form of a bank draft in favour of the complainant within a period of 60 days. It was further directed that subject to the aforesaid condition, the appellant (petitioner) shall be admitted to bail on furnishing of bail bond in the sum of Rs.1 lac with one surety in the like amount. This period of 60 days would elapse on 22.7.2019.

Petitioner challenged the aforesaid order dated 23.5.2019, by filing CRM-M-41847 of 2019. It was prayed in the said petition under Section 482 Cr.P.C. that condition imposed by the learned Appellate Court to deposit 20% of the compensation amount in the form of bank draft within 60 days is liable to be quashed. The petition (CRM-M-41847 of 2019) was filed on the ground that it was an unreasonable condition which is imposed by the learned Appellate Court.

On 17.2.2020, this Court passed interim order by observing that the petitioners are permitted to deposit 20% of the compensation amount latest by 17.3.2020. It was further directed that bail granted to the petitioners, in the circumstances, would not be cancelled provided that such amount is positively paid within the date fixed.

Thereafter, on 11.12.2020, it was brought to the notice of this Court that till date the said amount has not been deposited and the learned counsel for the petitioners sought one week's time to get instructions. The matter was thereafter adjourned.

Since the petitioner did not deposit 20% of the compensation amount by 17.3.2020, and there was no further interim order passed by this Court, the learned Appellate Court on 12.1.2021, passed a detailed order by giving background of the case and observed that the appellant (petitioner) was consistently disobeying the directions of the High Court contained in order dated 17.2.2020 and has not deposited 20% of the compensation amount till date which he was otherwise required to deposit upto 17.3.2020, and the learned

Appellate Court considering the circumstances of the case cancelled the bail which was granted to the petitioners vide order dated 23.5.2019 and it was directed that his bonds be forfeited to the State and warrants of arrest against the appellant and notice under Section 446 Cr.P.C. to the surety be issued for 4.2.2021

The aforesaid order was passed on 12.1.2021 and the warrants of arrest were issued for 4.2.2021. The petitioner filed a petition for anticipatory bail under Section 438 Cr.P.C. vide CRM-M-3833 of 2021. This petition for anticipatory bail came up for hearing before this Court on 28.1.2021 and the learned counsel for the petitioners made a request for an adjournment and consequently it was adjourned to 2.2.2021. On this date i.e. on 2.2.2021, the lawyers were abstaining from work and the petitioner appeared in person through video conference and apprised this Court that warrants have been issued for 4.2.2021 and the petitioner further submitted that his case is covered by a judgment passed by a Coordinate bench of this Court in Vivek Sahni and another Vs.Kotak Mahindra Bank Ltd., 2019 (4) RCR (Crl.) 614 stating that once bail has been granted by the learned Appellate Court under the provisions of Section 148 of the Act, the same cannot be cancelled on the ground of non-payment of 20% of the compensation amount. Petitioner further submitted that 20% of compensation amount in all the three cases comes to Rs.21 lacs out of which he will deposit Rs.10 lacs immediately. Relying upon the submissions made by the petitioner-in-person with regard to the judgment passed by a Coordinate bench of this Court in Vivek Sahni and another (supra), this Court directed that the petitioner shall appear before the appellate Court on 4.2.2021 and the operation of order dated 12.1.2021, to the extent of cancellation of bail was stayed till the next date of hearing i.e. today.

The matter has been heard at length today with the able assistance of the learned counsels for the petitioners and respondent through video conference.

Learned counsel for the petitioners has argued that in pursuance of the undertaking given by the petitioner, he has already deposited Rs.10 lacs before the learned Appellate Court and Rs.11 lacs are remaining. He has submitted that the learned appellate Court could not have imposed the condition of 20% as the condition was unreasonable in nature. He further submitted that due to non arrangement of money especially due to Covid - 19 Epidemic, 20% of compensation amount could not be deposited. He, therefore, prayed for the grant of anticipatory bail as well as for quashing of order dated 12.1.2021, passed by the learned Appellate Court whereby his bail was cancelled on the ground of non-deposit of 20% of the compensation amount.

Per contra, the learned counsel for the respondent has apprised this Court that the aforesaid judgment in Vivek Sahni and another (supra) stood distinguished in a later case by a Coordinate bench of this Court in Surinder Singh Deswal and Ors. Vs.Virender Gandhi, CRM-M- 37243-2019, whereby a bunch of 28 cases was decided. He referred to para 15 of the judgment of this Court in Surinder Singh

Deswal and Ors. (supra) and contended that it was held in the aforesaid Sahni's case, that it is nowhere discernible that there was any order of cancellation of bail/suspension of sentence under challenge before the Coordinate Bench and therefore, question framed was purely academic without any factual foundation. It was further observed that it can be realized that reasons recorded while answering question No.2 are in cognizance with the law laid down by the Hon'ble Supreme Court in Surinder Singh Deswal and Ors. Vs. Virender Gandhi and Ors., in Criminal Appeal Nos.1936-1963 of 2019 decided on 8.1.2020 and without considering the relevant statutory provisions for suspension of sentence as contained under Section 389 (1) Cr.P.C. It was concluded that the orders passed by the learned appellate Court while cancelling suspension of sentence on account of their failure to deposit 25% of compensation amount, are perfectly legal and justified and they do not warrant any interference by this Court by entertaining the petition under Section 482 Cr.P.C.

The aforesaid judgment of a Coordinate Bench of this Court was assailed in the Hon'ble Supreme Court in CrI. Appeal No.1936-1963 of 2019 decided on 8.1.2020, Surinder Singh Deswal and Ors. Vs. Virender Gandhi and Ors., in Criminal, AIR 2020 SC 415, equivalent to 2020(2) SCC Page 514, in which it has been observed that the High Court was right in its opinion that question No.2 as framed in Vivek Sahni's case (supra) was not correctly considered and that it was for the appellate Court who has granted suspension of sentence to take call regarding non-compliance and take appropriate decision. Further, it was observed that non-compliance of the condition of suspension of sentence is sufficient to declare the order of suspension of sentence having been vacated.

The relevant portion of the judgment passed by the Hon'ble Supreme Court in Deswal's case (supra) is reproduced as follows:-

17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another (supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the Vivek Sahni' case.

18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."

Learned counsel for the respondent has argued that in view of the law laid down by the Hon'ble Supreme Court, once a bail was granted by the learned Appellate Court with a condition of deposit of 20% of the compensation amount within the stipulated time and the same was not deposited then the Appellate Court was within its right to cancel the bail of the appellant. He further submitted that in view of the law laid down by the Hon'ble Supreme Court in *Surinder Singh Deswal and Ors (supra)*, the present petition for anticipatory bail be dismissed in view of the fact that the Appellate Court had passed an order dated 23.5.2019 by granting 60 days time which expired on 22.7.2019 and more than 1½ years have lapsed thereafter, but the amount was not deposited by the petitioners and therefore, the learned Appellate Court was justified in cancelling the bail of the petitioner. He further submitted that a perusal of the order dated 23.5.2019, would show that the bail was granted subject to the condition of deposit of 20% of the compensation amount and the condition has been clearly violated by the petitioners.

Learned counsel for the respondent has further submitted that so far as other petition pertaining to quashing of the condition imposed by the learned Appellate Court for deposit of 20% of the compensation amount is concerned, the same is also liable to be dismissed on the ground that such a condition cannot be described as unreasonable condition in view of the statutory provisions contained under Section 148 of the Act which was inserted by way of amendment which came into force on 1.9.2018 and the present appeal was filed in the year 2019 and therefore, the provisions of Section 148 of the Act are directly applicable to the petitioners.

Learned counsel for the respondent has further relied upon another judgment of the Hon'ble Supreme Court in Criminal Appeal No.917-944 of 2019, decided on 29.5.2019, titled as *Surinder Singh Deswal and Ors. Vs. Virender Gandhi*, wherein it was held that provisions of Section 148 of the Act, as amended shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the Act even in a case where criminal complaint under Section 138 of the Act, was filed prior to the amendment Act of 2018. However in the present case, the appeal has been filed rather after the amendment came into force and therefore, provisions of Section 148 of the Act shall be directly applicable to the petitioners. Learned counsel for the respondent, therefore, has prayed for dismissal of all the six petitions.

Learned counsel for the petitioner has submitted that the petitioner has already deposited Rs.10 lacs and Rs.11 lacs are remaining and therefore, he may be considered for the grant of anticipatory bail. However, from the facts of the

present case, it can be seen that the petitioner was granted bail on 23.5.2019 on the condition of deposit of 20% of the compensation amount within 60 days which expired on 22.7.2019 and even thereafter more than 1½ years has elapsed but the petitioner has not been able to deposit the requisite amount.

The learned Appellate Court has also explained in detail the factual background with regard to the fact that the plea taken by the petitioner with regard to inability to pay the amount due to Covid -19 Epidemic could not be accepted because he has repeatedly sought time to deposit the said 20% of compensation amount.

Consequently, this Court is of the considered opinion that once bail was granted to the petitioner on the condition of deposit of 20% within a period of 60 days and thereafter a period of about 1½ years has elapsed and the petitioner has not deposited 20% of the compensation amount, the learned Appellate Court was justified in cancelling the bail because express condition of bail has been violated by the petitioner. The reliance made by the petitioner on Vivek Sahni's case *supra*, is also of no avail in view of the fact that now the law has been laid down by the Hon'ble Supreme Court in *Surinder Singh Deswal and Ors.* (*supra*). Learned counsel for the respondent has brought to the notice of this Court that against the judgment passed by this Court in Vivek Sahni's case, an SLP was also preferred which has been dismissed by the Hon'ble Supreme Court on 2.12.2019. However, a perusal of the same would show that the said SLP has been dismissed in limine and special leave was not granted and therefore, it does not lay down any law. However, on the other hand, the Hon'ble Supreme Court in *Surinder Singh Deswal and Ors.* (*supra*) laid down the law in this regard by observing that if a condition of bail which was granted under Section 148 of the Act is violated and the amount is not deposited, then the bail is liable to be vacated.

In view of above, all the above six petitions of the petitioner are hereby dismissed. However, there shall be no order as to costs.