

CRA-S-2565-SB of 2015

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-2565-SB of 2015.
Date of Decision: 04.08.2015.**

Amarjit Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Lakhwinder Singh Mann, Advocate for the appellant.
Mr. K.S. Sidhu, Deputy Advocate General, Punjab.

Paramjeet Singh, J. (Oral)

This order shall dispose of the instant appeal praying for setting-aside the order dated 28.11.2014 passed by the learned Special Judge, Fatehgarh Sahib, whereby after issuing notice under Section 446 Cr.P.C. to the appellant, his surety bonds have been forfeited to the State and a penalty of ₹30,000/- has been imposed on him on the ground that,

as undertaken by him in his surety bond, he failed to produce Balbir Singh accused in the Court in case FIR No. 184, dated 17.07.2013, under Sections 15/61/85 of the NDPS Act, registered at Police Station Mandi Gobindgarh, District Fatehgarh Sahib.

Facts in brief are that accused Balbir Singh had not appeared before the trial Court, and ultimately, his bail was cancelled and non-bailable warrants were ordered to be issued against the accused. However, due to non-execution of non-bailable warrants, proceedings under Section 82 of the Code of Criminal Procedure were initiated against the accused and on 28.11.2014 accused Balbir Singh was declared as proclaimed offender by the trial Court and the appellant was ordered to pay an amount of Rs. 30,000/- as penalty as he stood surety for the accused.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant contends that due to non-appearance of accused Balbir Singh, his bail was cancelled and notice to surety Amarjit Singh appellant was also issued. On 20.09.2014 the appellant had appeared before the trial Court and the trial Court had issued notice under Section 446 Cr.P.C. Thereafter, on 28.11.2014 the accused Balbir Singh was declared as proclaimed offender and appellant

was directed to deposit the surety amount to the tune of Rs. 30,000/-. Learned counsel further contends that there was no connivance between the appellant and accused Balbir Singh and the impugned order dated 28.11.2014 is a result of non-application of mind and the same may be set-aside.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the appellant and supported the impugned order. Learned State counsel further contended that since the conduct of the appellant is wholly irresponsible, he must suffer for the laxity on his part.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, there is no allegation about the connivance between the appellant and accused-Balbir Singh. There is no allegation that the appellant instigated or helped the accused, in any manner, not to appear or surrender in time. The Hon'ble Supreme Court in **Mohammaed Kunju versus State of Karnataka 1994 (4) RCR (Criminal) 726** has held as under:

"13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the court can realise from both the sureties together cannot exceed the amount which the

accused has stated in his bond. In other words, when the accused executed a bond for Rs. 25,000 the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in Ram Lal v. State of U.P., AIR (1979) SC 1498. Their Lordships, after referring to the wording contained in Form No. 42 of Schedule V of the old Code of Criminal Procedure, 1898, have held thus :

"The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon even if both the undertakings happened to be executed in the same document for the sake of convenience. Each undertaking being distinct could be separately enforced."

14. We have noticed that the wording in the corresponding Form in the new Code is Identical (vide Form No. 45 in the second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs. 25,000,

15. Lastly, learned counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in *Madhu Limaye v. Metropolitan Magistrate and Ors.*, [1984] Suppl. SCC 699, A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused-some foreign nationals—escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". In the present case, though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the appellant. The court could

have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail."

In Criminal Misc. No M-4941 of 2012, titled 'Surender Versus State of Haryana through District Magistrate, Gurgaon', decided on 30.04.2012, a Coordinate Bench of this Court has held as under:

"Coming to the facts of the present case, the impugned order dated 24.11.2010, passed by the learned District Magistrate, Gurgaon, would show that there was no allegation against the petitioner that he, as a matter of fact, instigated or helped the convict, in any manner, not to surrender in time. Once any such allegation is conspicuously missing, the impugned order is not sustainable in law, as it is.

In the totality of the facts and circumstances of the present case, noted above, couple with reasons aforementioned and to secure the ends of justice, the impugned order dated 24.11.2010 (Annexure P-1), passed by the learned District Magistrate, Gurgaon, is ordered to be modified to the extent that instead of ₹ 2,00,000/- (Rupees two lacs only) to be forfeited to the State, the petitioner would pay ₹20,000/- (Rupees twenty thousand only). Resultantly, striking a balance and also keeping in view the peculiar facts and circumstances of the present

case, the instant petition is partly allowed. The impugned order is modified, accordingly.

The instant petition stands disposed of.”

For the reasons stated above, the impugned order is modified to the extent that penalty of Rs. 30,000/- imposed upon the appellant is reduced to Rs.10,000/-.

Disposed of.

August 04, 2015.
kanchan

(PARAMJEET SINGH)
JUDGE