

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

**CRM-M-34342 of 2015 (O&M)
Date of Decision: 4.12.2015**

Sukhwinder Kaur

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Raj Kapoor Malik, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present petition, under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), is directed against the order dated 7.4.2015 passed by the District Magistrate, Kaithal-respondent No.2, whereby surety amount of ₹2 lacs furnished by Late Sh. Baldev Singh, husband of the petitioner, was forfeited and the same was ordered to be recovered from his immovable property, by arrears of land revenue.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 23.11.2015, was filed.

Learned counsel for the petitioner submits that it is not in

dispute that Late Sh. Baldev Singh, husband of the petitioner, stood surety for the prisoner namely Daler Singh, for his release on parole in case FIR No. 32 dated 23.6.2010 under Sections 15/25 of the NDPS Act, registered at Police Station Dharamgarh, District Sangrur. When the convict Daler Singh was on parole, he came to be arrested on 22.1.2015 by the Uttar Pradesh Police in FIR No. 22 dated 22.1.2015 under Sections 8/15 of the NDPS Act, registered at Police Station Chandosi District Muradabad (UP) and was in police custody. This was the reason that Daler Singh could not surrender before the jail authorities, Sangrur, on 24.1.2015. He refers to the death certificate dated 8.9.2015 of Late Sh. Baldev Singh (Annexure P-1) to justify the maintainability of the present petition by the petitioner who is widow of Late Sh. Baldev Singh. He concluded by submitting that although the deceased-surety provided the material information to respondent No.2, about the arrest of prisoner by the UP Police, yet the said material fact was not properly appreciated by respondent No.2, while passing the impugned order, which has resulted in miscarriage of justice. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that since the husband of the petitioner has violated the terms and conditions of his surety bond, respondent No.2 has rightly passed the impugned order and the same deserves to be upheld. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case

and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present petition deserves to be accepted, for the following more than one reasons.

It has gone undisputed on record that convict-Daler Singh, while he was on parole up to 24.1.2015, came to be arrested by the Uttar Pradesh Police on 22.1.2015 in a case arising out of FIR No. 22 under Sections 8/15 of the NDPS Act, registered at Police Station Chandosi, District Murdabad. Since Daler Singh remained confined in District Jail, Muradabad, he could not surrender before the jail authorities at Sangrur, on 24.1.2015.

Having received this information from jail authorities at Sangrur, respondent No.2 issued a show cause notice to Late Sh. Baldev Singh, as to why the surety amount be not forfeited. On receipt of the show cause notice, Late Sh. Baldev Singh apprised respondent No.2 about the arrest on Daler Singh by Uttar Pradesh Police. This fact was also verified by Superintendent of Police, Kaithal, vide communication dated 19.3.2015 (Annexure P-2). Having said that, this Court feels no hesitation to conclude that respondent No.2 has exceeded his jurisdiction, while passing the impugned order and the same cannot be sustained.

The relevant part of the impugned order dated 7.4.2015 (Annexure P-3) passed by respondent No.2 reads as under:-

“.....The surety has been informed by this Court that Daler Singh prisoner has not surrendered after finishing his parole period. Therefore, why the surety amount submitted by you should not be

recovered and deposited in the Government Treasury. You can submit your explanation. Baldev Singh son of Pardhan Singh surety appeared in the court and submitted that prisoner has been arrested in another NDPS case registered at Police Station Chandosi, District Muradabad (UP) and he has also submitted final information report. Besides this, Superintendent of Police, Kaithal, has also submitted about the arrest of the prisoner vide his office letter no. 14091 dated 19.3.2015.

Because prisoner and surety have violated the condition of the parole, therefore, I order to forfeit the surety amount of Rs. Two Lakh submitted by Baldev Singh son of Pardhan Singh to the Government Treasury. Surety himself should get deposited the amount of Rs. Two lakh within 30 days in the Government Treasury. If surety does not deposit the surety amount, surety amount secured against the immovable property of surety, be recovered after auction/attaching as land revenue. A copy of this order is sent to the surety through registered post and one copy of this order is sent to District Revenue Officer, Kaithal, for further necessary action as per rule.”

A bare reading of the abovesaid operative part of the impugned order would show that although respondent No.2 recorded

the factum of arrest of the convict Daler Singh by the Uttar Pradesh Police in his order, yet he proceeded further against the surety alleging violation of the condition of parole, which was neither factually correct nor legally justified. It is so said because arrest of the convict by Uttar Pradesh Police was beyond the control of Late Sh. Baldev Singh. In such a situation, respondent No.2 proceeded on a factually incorrect and legally misconceived approach, while passing the impugned order and the same cannot be sustained for this reason also.

Further, had Daler Singh absconded, then he as well as his surety Late Sh. Baldev Singh could have been held liable, for violating the conditions of surety bonds. However, in the present case, Daler Singh was not only arrested by UP Police, but he was also kept in custody in District Jail, Muradabad. After his release on bail in the abovesaid FIR No. 22 dated 22.1.2015, convict-Daler Singh was straightway transferred to District Jail Sangrur and this fact has not been disputed by the respondent-State, in its reply. Since there is not even a passing reference in this regard in the impugned order and respondent No.2 also failed to record any reasons much less cogent reasons, in the impugned order, the same has resulted in miscarriage of justice and cannot be sustained, for this reason as well.

During the course of hearing, when a pointed question was put to the learned counsel for the State as to which condition of the surety bond was violated by the surety-Late Sh. Baldev Singh, he had no answer and rightly so, it being a matter of record. It is the

settled proposition of law that every administrative order must be a speaking and well reasoned one. However, respondent No.2 has not only failed to consider and appreciate the material information supplied by the surety in his reply, filed to the show cause notice but respondent No.2 also failed to assign any reason in support of his impugned order, which has rendered the impugned order patently illegal and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted. Consequently, impugned order dated 7.4.2015 (Annexure P-3) passed by District Magistrate, Kaithal-respondent No.2, is hereby quashed.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

4.12.2015
Ak Sharma