

CRM-M-6294-2015

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

**CRM-M-6294-2015 (O & M)
Date of Decision: 23.07.2015**

Khem Chand

... Petitioner(s)

Versus

State of Haryana

... 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. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Paramjeet Singh, J. (Oral)

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Allowed, as prayed for. Annexure A-1 is taken on record.

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Instant petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 12.01.2015 (Annexure P-4) passed by the Chief Judicial Magistrate, Gurgaon, in case arising from FIR No.230 dated 10.06.2003, registered at Police Station D.L.F.Gurgaon, under Sections 395, 397, 120-B and 412 of the Indian Penal Code, whereby warrants of arrest have been issued against the petitioner being surety and others.

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Brief facts giving rise to present petition are to the effect that the accused/convicts were convicted under Section 395 read with Section 397 of the Indian Penal Code in the above stated FIR. Thereafter, the convicts approached this Court in CRA-S-1669-SB-2004 impugning the conviction and sentence. In the said criminal appeal, convict-Tinkesh moved application for suspension of sentence which was allowed on 10.01.2005 and his sentence was suspended on furnishing bail bonds to the satisfaction of Chief Judicial Magistrate, Gurgaon. Convict-Tinkesh was ordered to furnish personal bonds in the sum of ₹1 lac with two sureties in the like amount each. The petitioner stood surety for convict-Tinkesh. Thereafter, non-bailable warrant has been issued against the petitioner vide impugned order dated 12.01.2015 because convict-Tinkesh for whom the petitioner stood surety, did not turn up as and when directed by the Court. Hence, this petition.

On 12.03.2015, learned counsel for the petitioner submitted that the petitioner was arrested and released on bail and he was directed to deposit the amount of Rs.1 lakh as surety.

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

Learned counsel for the petitioner contends that due to non-appearance of convict-Tinkesh, warrants of arrest of the petitioner has been issued. Thereafter, the petitioner was arrested and he was directed to deposit the amount of ₹1 lakh as surety. There was no connivance between the petitioner and convict-Tinkesh. The impugned order is

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result of non-application of mind and the same may be set aside.

Per contra, learned State counsel vehemently opposes the contentions of learned counsel for the petitioner and supports the impugned order. Learned State counsel further contends that since the conduct of the petitioner is wholly irresponsible, he must suffer for the laxity on his part.

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

On 12.03.2015, following order was passed by this Court:

“Learned counsel for the petitioner submits that the petitioner was arrested and produced before the court and thereafter released on bail. The trial Court has directed the petitioner to deposit the amount of ₹ 1 lakh as surety.

Adjourned to 28.04.2015.

Petitioner is directed to deposit the amount of ₹ 20,000/- in the trial Court, subject to the final decision of this petition. In that event, the amount as ordered to be recovered from the petitioner, being surety, shall not be recovered.”

In compliance of order dated 12.03.2015, the petitioner has deposited the amount of ₹ 20,000/- vide receipt dated 27.04.2015 (Annexure P-1).

Admittedly, there is no allegation about the connivance between the petitioner and convict-Tinkesh. There is no allegation that the petitioner instigated or helped convict-Tinkesh, in any manner, not to

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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."

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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

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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."

In view of law laid down by the Hon'ble Supreme Court in ***Mohammaed Kunju's case (supra)*** and by the Coordinate Bench of this

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Court in *Surender's case (supra)*, the petitioner is directed to deposit ₹ 20,000/-, being surety amount, which he has already deposited, vide receipt (Annexure P-1), in compliance of order dated 12.03.2015 passed by this Court.

Disposed of in the aforementioned terms.

23.07.2015
parveen kumar

(Paramjeet Singh)
Judge