

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

**CRM-M No.28242 of 2016 (O&M)
Decided on: 28.09.2017**

Jagjit Singh and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R.K. Arya, Advocate
for the petitioners.

Mr. K.S. Sidhu, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for quashing the orders dated 22.03.2016 and 30.03.2016 vide which the trial Court has forfeited the bail bonds of the petitioner No.1 and subsequently has imposed a penalty of Rs.50,000/- each on petitioner No.1/accused and on his surety i.e. the amount given in the bail/surety bonds in exercise of its power under Section 446 Cr.P.C.

Counsel for the petitioners has submitted that petitioner No.1 is serving in Indian Army and was posted in Uri Sector in Jammu and Kashmir and on account of heavy snowfall, he could not obtain leave and attend the Court on 16.02.2016 and accordingly, his bail bonds were cancelled/forfeited by the trial Court. Later on, the trial Court vide impugned order dated 22.03.2016, imposed a penalty of Rs.50,000/- on the surety of petitioner No.1 and issued a proclamation against petitioner No.1 along with the recovery warrants of Rs.50,000/- qua the surety i.e. petitioner No.2 namely Gurmeet Kaur. On the next

date of hearing i.e. 30.03.2016, the trial Court passed the impugned order (Annexure P2) on the application filed by petitioner No.1 for furnishing fresh bail/surety bonds and petitioner No.1 was admitted on bail on furnishing his personal bail bonds in the sum of Rs.1,00,000/- on the same day. A notice under Section 446 Cr.P.C. was served upon petitioner No.1 and the penalty of Rs.50,000/- was imposed on petitioner No.1 simultaneously on the same day.

Counsel for the petitioners has submitted that the trial Court has not accepted the version given by petitioner No.1 that on account of his professional commitment being a serving Army personnel, he could not appear before the trial Court on the date fixed and, therefore, the impugned order is patently non-speaking with regard to explanation given by him.

It is also submitted that the order qua imposing a penalty of Rs.50,000/- which is an equivalent amount of the surety bonds, no proper procedure under Section 446 Cr.P.C. was made and no proper opportunity was granted to the petitioner No.1 to explain his case as on the same day, fresh bail bonds of petitioner No.1 were accepted and simultaneously, notice under Section 446 Cr.P.C. was served and in the said order, the penalty of Rs.50,000/- was also imposed.

It is also submitted that with regard to petitioner No.2 also, the proper opportunity of hearing was not granted by the trial Court while passing the order dated 22.03.2016. Counsel for the petitioners has further submitted that it was a single default on the part of petitioner No.1 for non-appearance and, therefore, imposition of penalty of Rs.50,000/- which the amount of the surety bonds is very

harsh and on a higher side especially in view of the fact that subsequently, petitioner No.1 has appeared before the trial Court and applied for fresh bail which was granted vide order dated 30.03.2016. In support of his arguments, counsel for the petitioners has referred to the judgment of this Court ***“Mohinder Singh vs The State of Punjab”***, **2008(22) RCR (Criminal) 704** wherein the Court after considering the fact that the accused person has later on joined the proceedings, the petitioner was directed to deposit 1/4th of the amount of surety bonds.

I have heard the counsel for the parties and considered the explanation given by the petitioner that due to his posting at high altitude border area being a serving army person, he could not appear before the trial Court. Accordingly, this petition is allowed and the penalty imposed upon the petitioners in the sum of Rs.50,000/- each is reduced to Rs.5,000/- each.

(ARVIND SINGH SANGWAN)
JUDGE

28.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No