

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

**CRA-S No.3428-SB of 2017 (O&M)
Decided on: 28.01.2020**

Asgar

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sarfraj Hussain, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.30715 of 2017

Prayer in this application is for condoning delay of 567 days in filing the appeal.

Heard.

In view of averments made in the application, the same is allowed and delay of 567 days in filing the appeal stands condoned.

CRA-S No.3428-SB of 2017

Prayer in this appeal is for setting-aside the order dated 03.11.2015 passed by the Additional Sessions Judge, Faridabad vide which in a proceedings initiated against the appellant under Section 446 of the Code of Criminal Procedure, an amount of Rs.1 lac was imposed as a penalty on account of the fact that the appellant stood surety of one Umar Mohammad in FIR No.903 dated 14.12.2013 registered under

Sections 148, 149, 307, 420, 420-B IPC and 4A/8, 2/80 of C.S. Act at Police Station Sector 7 Faridabad, District Faridabad.

Counsel for the appellant has argued that as per the order dated 03.11.2015, Umar Mohammad absented from the Court proceedings on a previous date and thereafter, non-bailable warrants were issued against him and even, the proceedings to declare him a proclaimed offender were also initiated. It is further submitted that later on, Umar Mohammad surrendered before the trial Court and he faced the trial and vide judgment dated 24.10.2016 (Annexure P1), he was acquitted, however, some of his co-accused were convicted. Counsel for the appellant has, thus, argued that the non-appearance of Umar Mohammad was not intentional as he on a subsequent date had surrendered before the trial Court and faced the trial.

Counsel for the appellant has further submitted that no proper opportunity of hearing was given to the appellant as on the date when the case was fixed for appearance of Umar Mohammad, the impugned order dated 03.11.2015 was passed.

Counsel for the appellant has relied upon the judgment passed by this Court ***“Mohinder Singh vs The State of Punjab”***, 2008(22) RCR (Criminal) 704, ***“Angrej Singh vs State of Punjab”***, 2010(4) RCR (Criminal) 580 and ***“Gopal Kaur vs State of Punjab”***, 2011(6) RCR (Criminal) 1394, wherein this Court while imposing penalty under Section 446 Cr.P.C. has held that the amount of penalty may be reduced to 1/4th of the amount of surety bonds.

Counsel for the State on the basis of the judgment of

acquittal of Umar Mohammad dated 24.10.2016 has not disputed the fact that subsequent to passing of the impugned order dated 03.11.2015, he has already appeared before the trial Court and faced the trial.

After hearing the counsel for the parties, I find merit in the present appeal considering the law laid down in the aforesaid judgments and also in view of the fact that the impugned order dated 03.11.2015 was passed on the same day when the presence of Umar Mohammad was required and without awaiting for his appearance and granting further time, the total amount of the surety bonds of Rs.1 lac was imposed as a penalty on the appellant, the present appeal is *partly allowed* and the penalty amount of Rs.1 lac imposed by the trial Court upon the appellant vide impugned order dated 03.11.2015 is reduced to Rs.20,000/-, which will be paid by him.

The penalty amount of Rs.20,000/- shall be deposited with the trial Court within a period of 02 months from today.

It is made clear that if the amount of penalty is not deposited on or before 31.03.2020, the present appeal shall be deemed to be dismissed without any further orders.

(ARVIND SINGH SANGWAN)
JUDGE

28.01.2020
yakub

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