

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

(218)

CRM-M-17795-2018 (O&M).
Date of Decision:-17.11.2021.

Raghubir and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. B.K. Bagri, Advocate for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for setting aside the impugned order dated 11.09.2013 passed by respondent No.1 vide which the surety amount of Rs.1,50,000/- from each of the petitioner was forfeited.

Brief facts of the case are that as per letter dated 01.03.2021 of the Commissioner, Gurgaon Division, Gurgaon, furlough of two weeks was granted to the convict Sunil @ Leader son of Sh. Ram Kumar, resident of Mohalla Jatwara, Bawal, Tehsil Bawal, District Rewari and the petitioners had given a surety of Rs.1,50,000/- each, for complying with the terms and conditions of the said furlough which was verified from the Tehsildar Bawal. Accordingly, the said convict was released on furlough on 09.03.2011 for two weeks and was directed to surrender in District Jail,

CRM-M-17795-2018 (O&M)

Narnaul on 24.03.2011. However, since the said convict did not surrender upon the completion of two weeks, thus, case No.56 dated 19.04.2021 under Section 8/9 of the Police Station, Balwal was registered and proceedings were initiated for the recovery of surety amount given for the furlough and show cause notice was issued to the petitioners. A reply was filed to the said show cause notice, in which it was submitted that the convict was admitted in Civil Hospital, Rewari due to illness and the doctor had advised him rest for 07 days and regarding the said fact, the sureties had given oral information at the Police Station, Bawal. It was further submitted that the petitioner had not committed any negligence/lapse in the matter and that they are poor persons and they can hardly bear the expenses of their families and, therefore, the surety amount of Rs.1,50,000/- each as mentioned in the surety bond not be forfeited and the case be filed. The District Magistrate, Rewari, after hearing both the parties forfeited the amount of Rs.1,50,000/- each, as mentioned in the surety bond and observed that in case the petitioners failed to deposit the said amount, then the recovery would be effected as a due of land revenue.

Learned counsel for the petitioners has submitted that the order imposing deposition of Rs.1,50,000/- on each of the petitioners is very harsh inasmuch as there was no finding of the Court that the petitioners had or were acting in collusion with the said accused. It is further submitted that in fact the convict Sunil was admitted in the Civil Hospital, Rewari and has referred to the admission record of Sunil dated 23.04.2011 (Annexure P-1) to substantiate the same. It is also submitted that the convict Sunil had himself surrendered after recovering from his illness and the averments to

CRM-M-17795-2018 (O&M)

this effect have been specifically made in paragraph 11 of the petition to which there is no specific denial. Paragraph 11 of the petition is reproduced hereinbelow:-

“That the Learned District Magistrate, Rewari failed to appreciate that the convict Sunil @ Leader was not arrested by the local police Bawal but he himself surrender after recovered from the illness, therefore, the conduct of the convict was not to run away but due to the circumstances he was not in a position to surrender, therefore, no further requirement to passing the order for forfeiting the amount vide order dated 11.09.2013 by the Learned District Magistrate, Rewari.”

Paragraph 11 of the reply is reproduced hereinbelow:-

“11. That the contents of this para of are wrong and hence denied.”

Learned counsel for the petitioners has submitted that, at any rate, the forfeiture of the entire amount of Rs.1,50,000/- each is very harsh and has relied upon a judgment of the Co-ordinate Bench of this Court dated 01.02.2013 passed in **CRM-M-15296-2012** titled as **Dalvir Vs. State of Haryana** as well as the judgment dated 15.09.2016 passed by a Co-ordinate Bench of this Court in **CRM-M-18977-2015** titled as **Ram Singh and another Vs. State of Haryana and another.**

Learned State counsel, on the other hand, has submitted that in the present case, the petition deserves to be dismissed as the surety bond of Rs.1,50,000/- was submitted by each of the petitioners and, thus, the impugned order has been legally passed. It is further submitted that no

CRM-M-17795-2018 (O&M)

specific date has been mentioned by the petitioners as to when the said convict Sunil @ Leader had surrendered.

This Court has heard the learned counsel for the parties and has perused the record.

A Co-ordinate Bench of this Court in Dalvir Singh's case (supra) has held as under:-

“The petitioner has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing of the order dated 24.11.2010 (Annexure P-1), passed by the learned District Magistrate, Gurgaon, whereby the surety amount of ₹ 2,00,000/- (Rupees two lacs only) was ordered to be forfeited to the State. The petitioner stood surety in a sum of ₹ 2,00,000/- (Rupees two lacs only) for release of one convict Manoj Kumar on parole. It has been further ordered that amount be recovered from the petitioner as arrears of land revenue.

Notice of motion was issued.

Learned counsel for the petitioner submits that in the absence of any connivance between the petitioner and the convict, who jumped parole and did not surrender, the order passed against the petitioner is very harsh and is not sustainable in law, as such.

*Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in **Mohammaed Kunju versus State of Karnataka 1994 (4) RCR (Criminal) 726** and*

CRM-M-17795-2018 (O&M)

*also of this Court in **Harbhajan Singh versus State of Punjab 2008 (4) R.C.R. (criminal) 410**. He prays for acceptance of the petition and quashing of the impugned order dated 24.11.2010.*

Per contra, learned counsel for the State vehemently contended that there is no illegality in the order, passed by the District Magistrate, Gurgaon. He further submits that the convict came to be arrested by the police and another FIR was lodged against him under the Arms Act for which he is being proceeded against, in accordance with law. He concluded by submitting that since the conduct of the petitioner is wholly irresponsible, he must suffer for the laxity on his part.

Having heard the learned counsel for the parties and after going through the record of the case, this Court is of the considered opinion that the impugned order dated 24.11.2010, passed by the learned District Magistrate, Gurgaon, is undoubtedly harsh on the face of it, particularly when there is no allegation on record about connivance of petitioner with the convict.

*Judgment rendered by the Hon'ble Supreme Court in **Mohammed Kunju's** case (supra) applies with full force in the present case.*

XXX---XXX

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

CRM-M-17795-2018 (O&M)

against the petitioner that he, as a matter of fact, instigated or helped the convict, in any manner, for not surrendering 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, coupled 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, amount is reduced to ₹ 20,000/- (Rupees twenty thousand only). 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.”

A perusal of the said judgment would show that in the said case, the surety amount of Rs.2,00,000/- was ordered to be forfeited to the State, as the convict had jumped parole and did not surrender and was ultimately arrested and there was another FIR registered against the said convict. Reliance was placed upon the judgment of the Hon'ble Supreme Court reported as 1994 (4) R.C.R. (Criminal) 726 and it was observed that there was no finding in the order to show that the petitioner therein had

CRM-M-17795-2018 (O&M)

instigated or helped the convict in any manner, in the act of not surrendering and, thus, the order was modified to the extent that instead of Rs.2,00,000/- an amount of Rs.20,000/- was ordered to be forfeited to the State. In Ram Singh's case (supra) also a Co-ordinate Bench of this Court had reduced the amount of fine to be paid by the petitioners (sureties therein) from Rs.50,000/- each to Rs.10,000/- each. A perusal of the impugned order passed in the present case would also show that no observation was made to the effect that the petitioners had helped or instigated the convict in the act of not surrendering on time, rather the plea in the present case was that the convict was admitted in the Civil Hospital. Although there is no affirmative plea to the effect as to whether the convict had subsequently surrendered or not but a perusal of paragraph 11 of the petition and the reply thereby (which have been reproduced hereinabove) shows that the convict had himself surrendered after recovering from illness. It has also been stated that the petitioners are very poor and are barely able to sustain their families.

Keeping in view the above-said facts and circumstances, the impugned order is modified to the effect that instead of Rs.1,50,000/- each to be forfeited to the State, the said amount is reduced to Rs.15,000/- each to be forfeited to the State. The petitioners are directed to deposit the amount of Rs.15,000/- each i.e., Rs.30,000/-, in all with the Tehsildar, Bawal, within a period of 15 days from the date of receipt of the certified copy of this order.

It is made clear that in case the said amount is not deposited within the stipulated time, then the present petition shall be deemed to have

CRM-M-17795-2018 (O&M)

been dismissed. It is further made clear that in case it is found that the convict Sunil has not surrendered, then liberty is granted to the State to move an application for setting aside the present order.

Disposed of in the above terms.

Since the main case has been decided, pending miscellaneous application, if any, shall stand disposed of.

(VIKAS BAHL)
JUDGE

November 17, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No