

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-22893-2021

Date of decision : 03.12.2021

Rajender

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Ashwani Bhardwaj, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for setting aside the order dated 07.10.2014 (Annexure P-1) passed by the District Magistrate, Rohtak, whereby the surety amount of Rs.2 lacs was forfeited to the State.

Learned counsel for the petitioner has submitted that in the present case, the petitioner along with one Sandeep had given one surety each of one Sriom @ Sunda son of Sher Singh. The said Sriom @ Sunda was convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 10 years in FIR no.111 dated 26.05.2003. He had applied for a parole for four weeks for maintenance of the house and the same was granted by the Commissioner, Rohtak vide order dated 06.06.2014. The petitioner as well as one Sandeep stood surety for the same to the extent of Rs.2 lacs each. The said accused Sriom did not

surrender on the stipulated date and thus, notice was issued to the sureties and vide impugned order dated 07.10.2014, the entire amount of surety was forfeited and the petitioner along with the other surety Sandeep was directed to deposit the same with the office of Superintendent, District Jail, Rohtak.

Learned counsel for the petitioner has submitted that in the present case, as is apparent from report dated 21.11.2016, it is the petitioner who had played a major role in getting the convict Sriom arrested, after becoming police informer. It is further submitted that the impugned order, imposing the surety to be deposited to the full extent of Rs.2 lacs, is harsh and there is no finding in the impugned order to the effect that the petitioner had connived with the said accused or had helped him in any way to violate the order and conditions of parole. For the said purpose, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***Mohammed Kunju vs. State of Karnataka*** reported as ***1999(4) RCR (Criminal) 726***. It is submitted that in the said case, after considering the fact that there was no allegation against the appellant therein to the effect that there was any connivance with the accused therein, the Hon'ble Supreme Court was pleased to reduce the forfeiture amount / penalty amount from Rs.25,000/- to Rs.5000/-.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that it is within the jurisdiction of the District Magistrate, Rohtak to forfeit the surety upto the maximum/ full extent of the surety amount. It is submitted that the order is legal and deserves to be upheld.

This Court has heard the learned counsel for the parties.

A perusal of the report dated 21.11.2016 would show that the

petitioner had played a major role in getting the accused arrested, after becoming police informer. Further perusal of the report would show that there is no allegation, much less prima facie proof to show that the petitioner had colluded with the said convict so as to violate parole, nor the petitioner had any knowledge of the same. In such a situation, forfeiture / confiscation of the entire amount of Rs.2 lacs is harsh and is also contrary to the law laid down by the Hon'ble Supreme Court in ***Mohammed Kunju's*** case (supra) and thus, keeping in view the law laid down in the above said judgment and also the facts and circumstances of the present case, the impugned order dated 07.10.2014 is modified to the effect that the confiscation / forfeiture amount in the case of the petitioner is reduced from Rs.2 lacs to Rs.40,000/-.

Learned counsel for the petitioner has submitted that the petitioner will pay the said amount of Rs.40,000/- to the competent authority within a period of one month from today.

It is made clear that in case the said amount is not deposited with the competent authority within a period of one month from today, then the present petition would be deemed to have been dismissed.

Accordingly, the present petition is disposed of in the above said terms.

(VIKAS BAHL)
JUDGE

December 03, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No