

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

222

**CRA-S-3208-SB-2018 (O&M)
Date of Decision : 31.08.2022**

Sanju Kumar and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present : Mr. J.K. Singla, Advocate
for the appellants.

Mr. Gurpreet Singh Sandhu, D.A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The appellants have filed the present appeal against orders dated 04.06.2018 and 09.07.2018 passed by learned Sessions Judge, Bathinda whereby a penalty of Rs.1,00,000/- each has been imposed upon the appellants.

Brief facts relevant for disposal of present appeal are that both the appellants stood as surety of accused-Christian Edike, who is facing trial in case FIR No.107 dated 05.05.2016 registered under Sections 489-B and 489-C of the Indian Penal Code, 1860 at Police Station Kotwali, Bathinda. When the aforesaid accused jumped the bail, proceedings under Section 446 of the Cr.P.C. were initiated against the appellants. When the appellants failed to produce the afore-said accused in the trial Court, the trial Court passed the impugned orders 04.06.2018 and 09.07.2018 and imposed penalty of Rs.1,00,000/- each upon the appellants.

Learned counsel for the appellants submits that both the

appellants had made all their best efforts to find out the accused and produce him before the trial Court but they failed to do so because they did not know the accused personally and later on came to know that he is a foreigner as resident of Nigeria and in such circumstances, the appellants cannot be fastened with any liability for non-appearance of the accused before the trial Court. A highly exorbitant amount of Rs.1,00,000/- each has wrongly been imposed upon the appellants vide impugned order dated 04.06.2018 completely ignoring the fact that the appellants had made their best efforts to produce the accused before the trial Court and the appellants have spend lot of amount in searching for the accused.

Learned counsel for the appellants, in the alternative, prays that a penalty of Rs.1,00,000/- each imposed upon the appellants, is excessive and, therefore, to meet the ends of justice, a remission should be granted to them as the appellants were not having an idea that the accused will jump the bail. In support of his arguments, learned counsel for the appellant relied upon the judgment passed by Hon'ble Supreme Court in ***Mohammed Kanju Vs. State of Karnataka : 1999(4) RCR (Criminal) 726*** and judgments passed by this Court in ***Raj Kumar and another Vs. State of Haryana : 2004(3) RCR (Criminal) 603***, ***Ajaib Singh Vs. State of Haryana : 2007(3) RCR (Criminal) 445*** and ***Bhagat Ram Vs. State of Haryana : 2005(2) RCR (Criminal) 661***.

On the other hand, learned State counsel submits that there is no illegality in the impugned orders passed by the trial Court. The appellants stood surety for the accused who was a foreign national and the appellants have failed to produce him before the trial Court.

Therefore, the present appeal deserves to be dismissed and no lenient view can be taken.

I have heard learned counsel for the appellants and learned State counsel and gone through the paperbook.

While dealing with the similar type of controversy, Hon'ble Supreme Court in case ***Ram Lal Vs. State of U.P. : AIR 1979 Supreme Court 1498*** observed as under:-

“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.”

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 appellants. 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 appellants had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail.

In view of above circumstances and the judgments relied upon by learned counsel for the appellants, I am of the view that some remission can be granted to the appellants. To meet the ends of justice,

a remission is granted to the extent that each of the appellant shall pay Rs.50,000/- (Rupees Fifty Thousand) instead of Rs.1,00,000/- as penalty. Let this amount be deposited by the appellants within 02 months from today. In default of payment of penalty within the stipulated period by the appellants, the present appeal shall be deemed to have been dismissed and the entire amount of penalty shall be recoverable from them according to law.

With the modification in the amount of penalty as indicated above, the present appeal is hereby dismissed.

Pending applications in this case, if any, shall stand disposed of accordingly.

31.08.2022
Kothiyal

(ASHOK KUMAR VERMA)
JUDGE

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