

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-11245-2018(O&M)

Date of decision: 29.11.2022

BHAJAN SINGH AND ANR

....Petitioners

Versus

STATE OF PUNJAB AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : None for the petitioners.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition had been filed for quashing of order dated 16.09.2016, Annexure P-1, whereby the petitioners have been directed by the respondent No.3 to deposit the amount of Rs.1,00,000/- each in view of the surety furnished by the petitioners for release of accused/convict Harmesh Singh on parole in FIR No.113 dated 13.06.2013 under Section 22/25/61/85 of the NDPS Act registered at Police Station Sadar Jagraon, District Ludhiana on account of non-surrender of said accused on expiry of period of parole.

The brief facts necessary for the determination of the present petition are that one Harmesh Singh S/o Satnam Singh was convicted in FIR No. 113 dated 13.06.2013 u/s 22/25/61/85 of NDPS Act P.S. Sadar Jagraon, Ludhiana vide judgment dated 29.10.2014 passed by Ld. Judge, Special Court, Ludhiana and sentenced to 10 years RI and fine of Rs. 1,00,000/-. In respect of his conviction in the aforesaid FIR, the accused Harmesh Singh had filed CRA-S-5070-SB of 2014 before this Hon'ble Court. The same is lying admitted before

this Hon'ble Court. While serving his sentence in the abovesaid case the accused Harmesh Singh applied to the jail authorities for grant of parole, which was sanctioned for a period of 3 weeks from 05.08.2016. The petitioners being known to the father of said Harmesh Singh and on the assurance of said Harmesh Singh agreed to furnish surety for his release on parole for a period of three weeks. Petitioners were under the bonafide belief that said Harmesh Singh would surrender before the jail authorities on 27.08.2016 i.e. on completion of his parole period. On earlier occasions also the said Harmesh Singh had been granted parole and he had surrendered in time before the jail authorities. The petitioners furnished surety to the tune of Rs. 1,00,000/- each for release of said accused on parole. The said accused Harmesh Singh however did not surrender on 27.08.2016, on completion of parole. Consequently, the order dated 16.08.16, Annexure P-1 was passed against the petitioners directing them to be present before the District Magistrate Ludhiana on 22.09.2016 and that surety amount given by them for parole of the prisoner be deposited in the Government Treasury, failing which the *farad jamabandi* given by the petitioners at the time of giving of surety shall be attached and the amount shall be realised after selling the same.

It has been averred in the petition that the accused Harmesh Singh had fallen ill, on account of which, he could not surrender in due time i.e. by 27.08.2016. The medical certificate dated on 01.09.2016 issued by Dr. Parminder Singh, under whom he was taking treatment has been appended as Annexure P-2. It is further averred in the petition that the said medical certificate was also got verified by the jail authorities from the concerned doctor vide their letter dated 21.04.2017, Annexure P-3. It is stated that accused Harmesh Singh had availed

the benefit of parole, but no action against him was taken for having overstayed the period. His sentence was suspended by this Court vide order dated 25.09.2017, Annexure P-4. It has been stated that the petitioners are poor farmers with meagre land holding and are not in a position to pay the surety amount as directed vide order dated 16.09.2016.

In para 10 of the petition, reliance has been placed on Section 8 and 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962 to submit that where the convict/prisoner does not surrender on expiry of parole he gets 10 days' grace period to surrender before the jail authorities, failing which only the penalty mentioned therein can be imposed. It is averred that the accused Harmesh Singh had surrendered within five days of the due date and no action was taken against him, however the order of deposit of Rs.1 lakh has been passed against the petitioners, which is stated to be illegal and arbitrary.

Learned State counsel has filed reply dated 28.08.2018 by way of affidavit of Shamsher Singh Boparai, PPS, Superintendent, Central Jail, Ludhiana and submits that the petitioners had deposited Rs.25000 as per direction of this Court vide order dated 19.03.2018. As per instructions received from ASI Gurdeep Singh the convict has already undergone his entire sentence.

Heard and perused the record.

As is apparent from the order dated 19.03.2018, this Court had stayed the impugned order dated 16.09.2016 subject to deposit of amount of Rs.25000 by the petitioners within a week from that date. As is admitted, the said order was duly complied with. The factum of accused Harmesh Singh being under treatment from Dr. Parminder Singh was verified by the respondents and it is a fact that the said accused had surrendered within 05 days, who has already undergone his

entire sentence. Keeping in view the peculiar facts and circumstances of the case, the order dated 16.09.2016, Annexure P-1 is modified to the extent of Rs.25000/- already deposited by the petitioners.

Petition stands disposed of.

(AMAN CHAUDHARY)
JUDGE

November 29, 2022

S.Sharma(syr)

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