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

CRM-M-14425-2022

Date of decision : 05.04.2022

Satpal and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for setting aside the impugned order dated 26.11.2021 (Annexure P-4) passed by respondent No.2 vide which surety amount of Rs.2,00,000/- from each of the petitioners was forfeited without there being any observation in the impugned order to the effect that the petitioners had also colluded with the accused in the act of not surrendering on time.

Learned counsel for the petitioners has submitted that in the present case, the petitioners had given sureties (Rs.2 lacs each) for the release of convict-Rajbir on 31.03.2020 and on the basis of same, the said Rajbir was granted three weeks' furlough to meet the family members.

Thereafter, as per the orders passed by the High Powered Committee,

special parole of the convict was extended upto 04.03.2021 and the said convict was directed to be present on 05.03.2021 in District Jail, Rohtak. It is submitted that the said accused did not surrender on 05.03.2021 and in fact, was involved in two criminal cases and was ultimately arrested on 12.04.2021 in FIR No.362 dated 18.10.2020. It is further submitted that vide impugned order, the surety amount of Rs.2,00,000/- each have been forfeited by the Government from each of the petitioners and the petitioners have been directed to deposit the same within a period of one month in the office of Superintendent District Jail, Rohtak. It is argued that perusal of the impugned order would show that there are no allegations against the petitioners or observations therein to the effect that they were acting in collusion with the convict or had instigated him in the act of not surrendering. It is further argued that in fact, the petitioners were not even aware that the furlough had been extended by special parole. It is contended that the petitioners are poor persons and on account of COVID-19, they were busy handling their own home affairs. It is further contended that the condition of forfeiture of the entire amount of surety is harsh as the said convict has already been arrested and is in custody. Reliance has been placed upon the 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 Coordinate Bench of this Court in CRM-M-18977-2015 titled as Ram Singh and another Vs. State of Haryana and another.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana,

appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that since the petitioners stood as sureties for the release of the convict to the extent of Rs.2,00,000/- each, thus, the impugned order has been rightly passed and the same does not call for any interference.

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 Rs.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 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.

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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 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 Rs.2,00,000/- (Rupees two lacs only) to be forfeited to the State, amount is reduced to Rs.20,000/- (Rupees twenty thousand only). The petitioner would pay Rs.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 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 in the present case would also show that there is no observations/allegation

against the petitioners therein to the effect that they had colluded with convict or had instigated him in either misusing special parole or not surrendering on time. The petitioners are stated to be poor persons and as per the case of the petitioners, they were not even aware about the special parole granted by the High Powered Committee and as per their understanding, they stood as sureties only for a period of three weeks i.e. the period for which furlough was initially granted to the convict.

Keeping in view the abovesaid facts and circumstances, as well as law laid down hereinabove, the present petition is partly allowed and the impugned order dated 26.11.2021 (Annexure P-4) is modified to the extent that instead of Rs.2,00,000/- from each of the petitioners to be forfeited to the State, the same is reduced to Rs.20,000/- from each of the petitioners to be forfeited to the State. The petitioners are directed to deposit Rs.20,000/- each i.e. Rs.40,000/- in all, with the Superintendent District Jail, Rohtak within a period of six weeks' from today.

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

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.

05.04.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**