

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-746-2022(O&M)

Date of decision : 04.05.2022

Manpreet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Mohit Sadana, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

Challenge in the present appeal is the order dated 20.04.2022 vide which the trial Court has directed the appellant to pay a sum of Rs.1 lac due to default in appearance of accused namely Harbans Singh in FIR no.46 dated 01.05.2018 registered under Sections 22/21/85 of the Narcotic Drugs and Psychotropic Substances Act (in short “NDPS Act”) at Police Station Sadar Mansa.

Learned counsel for the appellant has submitted that the appellant stood surety for said Harbans Singh, being an old acquaintance of the accused and on humanitarian grounds. On 03.11.2021, said Harbans Singh did not appear on account of wrong mentioning of the date of hearing and accordingly, the trial Court had issued notice under Section 446 Cr.P.C. to the appellant and the case was stated to be fixed for 20.12.2021. It has further been submitted that when the appellant came to know about the

Harbans Singh and requested him to surrender before the Court and thereafter, the said Harbans Singh surrendered before the trial Court on 20.12.2021 and was granted concession of bail vide order dated 07.01.2022. It has been stated that it is apparent from the order dated 07.01.2022 that accused Harbans Singh had joined the proceedings and thereafter, he was convicted vide order dated 22.04.2022 as is apparent from zimni order dated 22.04.2022 i.e. Annexure A-2. Learned counsel for the appellant has submitted that the appellant was not even aware of the passing of the impugned order dated 20.04.2021 vide which the penalty of Rs.1 lac was imposed upon him and further, proceedings for recovery of the same under Section 421 Cr.PC. were also ordered. Learned counsel for the appellant has further submitted that in the present case there was no collusion between the appellant and accused Harbans Singh, rather the appellant made all efforts for making the accused surrender and it was due to persuasion of the present appellant, that the accused had actually surrendered and had joined the proceedings and thus, the penalty of Rs.1 lac is highly excessive and not called for in the present case.

Learned counsel for the appellant 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 has been 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 counsel for the appellant has also relied upon the judgment of a coordinate Bench of this Court in **CRA-S-721-SB-2004** titled

as “**Bhagat Singh Vs. State of Haryana**” decided on 08.11.2017 vide which the coordinate Bench after considering the totality of circumstances had reduced the penalty from Rs.2 lacs to Rs.20,000/-. The relevant portion of the said judgment is reproduced hereinbelow:-

“It is further submitted that out of 04 accused persons, 03 accused persons namely Mukhtiar Singh, Satnam Singh and Nachhatar Singh have already been convicted by the trial Court vide judgment dated 05.10.2005 and, therefore, no prejudice has been caused to the prosecution for non-production of the tractor-trolley on 24.11.2003.

*Counsel for the appellants has relied upon the judgment passed by this Court “**Mohinder Singh vs The State of Punjab**”, 2008(22) RCR (Criminal) 704, “**Angrej Singh vs State of Punjab**”, 2010(4) RCR (Criminal) 580 and “**Gopal Kaur vs State of Punjab**”, 2011(6) RCR (Criminal) 1394, wherein this Court has while imposing penalty under Section 446 Cr.P.C. has held that the amount of penalty may be reduced to 1/4th of the amount of surety bonds.*

Counsel for the State, on instructions from ASI Randhir Singh, has not disputed the factual position that the main 03 accused persons have already been convicted by the trial Court on 05.10.2005.

Considering the fact that the present appeals are pending since 2004; the operation of the impugned order was stayed on 02.04.2004 and in view of the judgment cited hereinbefore, the present appeals are partly allowed and the penalty amount of Rs.2,00,000/- each imposed by the trial Court upon both the appellants i.e. Bhagat Singh and Suba Singh vide impugned order dated 02.03.2004 is reduced to Rs.20,000/- each, which will be paid by them. The penalty amount of Rs.20,000/- shall be deposited with the trial Court within a period of 03 months from today, failing which these appeals shall stand automatically dismissed without any further action.”

Learned State counsel, on the other hand, has opposed the present appeal and has submitted that it was within the right of the Special Court, Mansa, to forfeit the surety upto the maximum / full extent of the

surety amount and has also submitted that the order is legal and deserves to be upheld.

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

The appellant stood as surety for the accused Harbans Singh in FIR no.46 dated 01.05.2018 registered under Sections 22/21/85 of the NDPS Act at Police Station Sadar Mansa. On 03.11.2021 said Harbans Singh was not able to appear and accordingly, the trial Court had issued notice under Section 446 Cr.P.C. to the appellant and the case was fixed for 20.12.2021. It is the case of the appellant that the moment he came to know about the said fact, he had requested accused Harbans Singh to surrender and said Harbans Singh had surrendered, as is apparent from the order dated 07.01.2022 (Annexure A-1) vide which the said Harbans Singh was granted regular bail. Said Harbans Singh had subsequently joined the proceedings and vide judgment dated 22.04.2022 he had been convicted. Perusal of the order dated 07.01.2022 would show that the Court had considered the argument of said Harbans Singh that P.O. Proceedings were to be executed on 07.01.2022 and he had surrendered before the Court on 21.12.2021. It is the case of the appellant that he learnt about passing of the impugned order dated 20.04.2022, vide which the penalty of Rs.1 lac was imposed upon the appellant, subsequently when the appellant had gone to get himself discharged as surety on account of final adjudication of the main case. There is neither anything in the impugned order, nor on record to suggest that the present appellant acted in collusion with the accused and rather it is the case of the appellant that it was on his persuasion that the accused had joined the proceedings. Thus, in such a situation, forfeiture of the entire

amount of surety, i.e. Rs.1 lac is harsh and contrary to the law laid down by the Hon'ble Supreme Court of India in ***Mohammed Kunju's*** case (supra) and the coordinate Bench in ***Bhagat Singh's*** case (supra) in which, after considering the facts and circumstances of the said case, the penalty had been reduced from Rs.2 lacs to Rs.20,000/-, i.e. by 10%.

Keeping in view the law laid down in the above said judgments and the above said fact and circumstances moreso, the fact that there is nothing in the impugned order or on record to show that there was collusion between the present appellant and the accused and it was the present appellant who had persuaded the accused to join the proceedings, the impugned order dated 20.04.2022 is modified to the effect that confiscation / forfeiture/ penalty amount would be reduced from Rs. 1 lac to Rs.15,000/-. The appellant is directed to deposit the said amount of Rs.15,000/- with 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 appeal would be deemed to have been dismissed.

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

(VIKAS BAHL)
JUDGE

May 04, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No