

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
232

CRM-M-34585-2022 (O&M)

Date of Decision: 23.11.2022

Ram Kishan and another

.... Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Lekh Raj Nandal, Advocate for the petitioners.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 26.11.2021 (Annexure P-3) passed by respondent No. 2-Deputy Commissioner, Rohtak, vide which the surety of Rs.2,00,000/- from each of the petitioners was forfeited.

Briefly stated that convict-Rakesh S/o Rohtash, was serving life imprisonment in case FIR No. 202 dated 16.06.2012 (Annexure P-1) registered under Sections 364, 302 and 201 read with Section 34 IPC and Section 25 of the Arms Act, at Police Station Meham, District Rohtak. Vide order dated 08.01.2020 (Annexure P-2), passed by a Division Bench of this Court in CRWP-1551-2019, aforesaid Rakesh was released on parole for a period of six weeks for agricultural work. Both the petitioners, namely, Ram Kishan and Satyawar, have furnished bail/surety bonds to the tune of Rs.2,00,000/- each for the release of

convict-Rakesh. During the period of parole, convict-Rakesh was found involved in another case bearing FIR No. 099 dated 26.05.2020, under Sections 148, 149, 323, 506, 120-B and 302 IPC, Police Station Bahu Akbarpur, District Rohtak and was arrested in the said FIR. Notice regarding forfeiture of the surety given by the petitioners was issued to them by respondent No. 2. The petitioners have filed their reply to the aforesaid notice. Thereafter, respondent No. 2 without taking into consideration the averments made in the reply passed the impugned order dated 26.11.2021 (Annexure P-3) qua forfeiture of surety amount of Rs.2,00,000/- each furnished by both the petitioners. Hence the present petition.

Learned counsel for the petitioners submits that in the absence of any connivance between the petitioners and the convict-Rakesh, who was found involved in another FIR as mentioned above, the order passed against the petitioner is very harsh and is not sustainable in law, as such. In support of his contentions, learned counsel for the petitioner has relied upon the judgment of a co-ordinate Bench of this Court in ***CRM-M-17795-2018, Raghubir and another Vs. State of Haryana and another, decided on 17.11.2021, 2022 (1) RCR (Criminal) 251***. Thus, learned counsel for the petitioners prays that the present petition be allowed and the impugned order dated 26.11.2021 (Annexure P-3) be quashed.

While opposing the prayer of the petitioners, learned counsel for the State vehemently contended that there is no illegality in the order, passed by the Deputy Commissioner, Rohtak. He further submits that

since the conduct of the petitioners is wholly irresponsible, they must suffer for the laxity on their 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 26.11.2021 (Annexure P-3) passed by the learned Deputy Commissioner, Rohtak, is harsh on the face of it, particularly when there is no allegation on record about connivance of petitioners with the convict.

While dealing with the similar issue, the Hon'ble Supreme Court in ***Mohammaed Kunju versus State of Karnataka 1994 (4) RCR (Criminal) 726***, has in paras 13 to 15 thereof, held as under:

*"13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the court can realise from both the sureties together cannot exceed the amount which the accused has stated in his bond. In other words, when the accused executed a bond for Rs. 25,000 the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in **Ram Lal v. State of U.P., AIR (1979) SC 1498**. Their Lordships, after referring to the wording contained in Form No. 42 of Schedule V of the old Code of Criminal Procedure, 1898, have held thus*

: "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."

14. We have noticed that the wording in the corresponding Form in the new Code is Identical (vide Form No. 45 in the second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs. 25,000.

15. Lastly, learned counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in Madhu Limaye v. Metropolitan Magistrate and Ors., [1984] Suppl. SCC 699, A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused-some foreign nationals – escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". 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 appellant. 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 appellant 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."

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 ***Raghubir's case supra*** this Court while relying upon the judgment of Hon'ble the Apex Court in ***Mohammaed Kunju's case (supra)*** and various other judgments of this Court allowed the petition and set aside the order regarding forfeiture of the surety amount of Rs.1,50,000/-.

Perusal of the impugned order dated 26.11.2021 (Annexure P-3), passed by the learned Deputy Commissioner, Rohtak, would show that there was no allegation against the petitioners that they as a matter of fact, instigated or helped the convict, in any manner. Once any such allegation is conspicuously missing, the impugned order is not sustainable in the eyes of law.

In the facts and circumstances of the present case, noted above and to meet the ends of justice, the impugned order dated 26.11.2021 (Annexure P-3), passed by the Deputy Commissioner, Rohtak, is ordered to be modified to the extent that instead of Rs.2,00,000/- each to be forfeited to the State, the amount is reduced to Rs.20,000/- each. The petitioners are directed to deposit Rs.20,000/- each within a period of one week from the date of receipt of certified

copy of this order.

In default of payment of penalty within the stipulated period by the petitioners, the present petition shall be deemed to have been dismissed and the entire amount of penalty shall be recovered from them, in accordance with law.

With the modification in the amount of penalty as indicated above, the present petition stands disposed of.

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

November 23, 2022
rishu

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No