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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1109 of 2020

Date of decision: April 19, 2022

Jitender Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Satbir Singh Gill, Advocate,
for the petitioner.

Mr. Sumit Gupta, Addl. A.G., Haryana

SURESHWAR THAKUR, J. (ORAL)

1. One Savinder Singh became arrested on 26.03.2003, in case FIR No. 83 of 20.06.2003 registered at Police Station Dialpura, District Bathinda, wherein, an offence constituted under Section 15 of the NDPS Act, became embodied. After conclusion of trial upon FIR (supra), the learned trial Judge proceeded to impose a verdict of conviction, upon, the above Savinder Singh.

2. Be that as it may, during the pendency of the trial as entered upon by the learned trial Court concerned, he through an order made by the competent authority concerned, became granted parole for a period extending upto period of six weeks. However, the above order as made by the Addl. Director General of Police (Prisoners), Punjab, was made subject to a condition, that the above Savinder Singh furnishes surety of Rs. 2 lacs.

The petitioner herein is the surety of one Savinder Singh. A further imperative condition also became imposed upon Jitender Singh who stood surety rather for ensuring the entering into the prison concerned, by Savinder Singh, after a lapse of six weeks, to also make an undertaking, that in case the above Savinder Singh, does not make his surrender within the relevant six weeks, in the prison concerned, thereupon the surety bond carried in a sum of Rs. Two lacs, shall stand forfeited to the State of Haryana.

3. The accused Savinder Singh for whom the present bail petitioner stood as surety, did not step into the prison concerned after six weeks elapsing, from the date of making of the apposite order. Therefore, since prima facie the petitioner his surety, also did not cause his surrendering into the prison concerned, in sequel, there was a breach of the undertaking furnished by the present bail petitioner. Consequently, the afore apposite breach was enforced against the present bail petitioner, though his being ordered to deposit, through the impugned order carried in Annexure – P-2, hence a sum of Rs. Two lacs in Govt. Treasury or it being recoverable from his attachable assets.

4. The order drawn on 23.10.2018 became appealed by the petitioner herein, before the learned Addl. Sessions Judge, Sirsa. The Addl. Sessions Judge Sirsa through a decision made on 15.10.2019 upon Appeal bearing No. 311 CRA of 2019, did not grant any relief, to the petitioner rather proceeded to affirm the order as was made by the learned District Magistrate, Sirsa, therefore, the petitioner is rearing a grievance, and, is led to institute the instant revision petition before this Court.

5. In case, the principal accused failed to surrender into the prison

concerned, after elapse of the relevant six weeks, and, if the petitioner herein, also failed to make any concerted efforts, to ensure his stepping into the prison concerned, after elapse of six weeks, thereupon there was a deliberate and intentional breach of the appositely furnished undertaking by him. Consequently, the order as became passed initially by the learned District Magistrate, Sirsa, and, which was also affirmed by learned Addl. Sessions Judge, Sirsa, would become amenable for validation.

6. In adjudicating where any concerted efforts were made by the petitioner herein, and or for discovering whether there was any deliberate breach on the part of the petitioner herein, to cause the stepping into the prison concerned, of the principal accused, for whom he stood as a surety, it is imperative to bear in mind the factum, as, is detailed in the order made by learned Addl. Sessions Judge, Sirsa, that the principal accused had himself stepped into the prison concerned on 25.09.2018. Though the afore date of stepping into prison concerned by the principal accused, is much beyond, the date, when he was otherwise required to step into the prison concerned, but learned counsel appearing on behalf of the surety, as is apparent, on a reading of paragraph 8, of the verdict as made by the learned Addl. Sessions Judge, Sirsa, had advanced a plea, that the prisoner Savinder Singh, had undergone surgery of Harnioplasty from Dr. R.K. Mehta, Apex Hospital and Research Centre, Sirsa. Moreover, it is also apparent on a reading of paragraph 8, of the verdict made by learned Addl. Sessions Judge, Sirsa, that thereafter he was advised to take complete bed rest. Therefore, when Savinder Singh was unable to move, due to his unstable condition, the learned counsel for the petitioner argued before the learned court below, that the prisoner one Savinder Singh was unable to surrender in the prison

concerned in the month of March, 2018, when he was otherwise required to make his entry into the prison concerned. Despite the afore submission being addressed before the learned Addl. Sessions Judge, Sirsa, and though it appears that may be there was no credible evidence, to support the afore arguments, yet rather the learned Court became enjoined to ask for credible evidence in support thereof, rather than in a slipshod manner, and, riding roughshod qua the tangibility of the above argument, hence completely discard the above argument. Had the learned Court below asked for adduction of evidence to support the above argument, then only, the adduced evidence would have definitely unfolded the factum, whether the present bail petitioner had deliberately or intentionally breached his undertaking. The abysmal want (supra) on the part of the learned Court below, has not only resulted in denial of a completest opportunity to the present bail petitioner to support his above argument but has also resulted in the completest failure of justice besides has also resulted in oppressive and coercive consequences becoming encumbered upon his estate.

7. Be that as it may, as stated above, the afore consequences were avoidable. Therefore, for saving the estate of this present bail petitioner from its becoming encumbered with oppressive, and, exacting consequences, that too without evidence (supra) being asked to be adduced by the learned Court below, this Court allows the present petition.

8. Further, it is also deemed appropriate to remand the *lis* to the Court below, with a direction upon it, to ensure that the above made arguments by the learned counsel for the petitioner, are permitted to be supported, by tangible and credible documentary evidence. Necessarily an opportunity for adduction of evidence (supra) is to be afforded to the

present bail petitioner by the learned Addl. Sessions Judge, Sirsa.

9. Moreover, the learned Court below is directed to record a fresh decision in accordance with law upon Criminal Appeal No. 311-CRA-2019 within two months thereafter. It is further clarified that till a fresh decision is made upon Criminal Appeal No. 311-CRA-2019, by the learned Addl. Sessions Judge, Sirsa, thereupto the order made by the learned District Magistrate, Sirsa, on 23.10.2018, shall not be enforced.

10. Disposed of.

April 19, 2022

Satyawan

(SURESHWAR THAKUR)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes