

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

CRA-S-1578-2022 (O&M)

Date of decision : 19.12.2022

Mahinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Munish Raj Chaudhary, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present appeal has been preferred under Section 446 Cr.P.C. by the surety against the order dated 5th of February, 2021 passed by the Court below whereby the surety-appellant has been saddled with the penalty of Rs.1.00 lac.

2. One Gurjant Singh was facing trial in FIR No.298 dated 20th of September, 2017 registered for the offences punishable under Sections 457, 380, 436, 427 IPC, 1860 at Police Station City Barnala, District Barnala and was granted concession of bail. The present appellant Mahinder Singh stood surety for him on 24th of December, 2019. The said Gurjant Singh absented himself from the trial. Notice was issued to the present appellant to produce Gurjant Singh on 11th of January, 2021 for having stood surety for him however, the appellant failed to do so. Resultantly, the present

order was passed on 5th of February, 2021. Later on Gurjant Singh was arrested and produced on 25th of March, 2021.

3. Ld. Counsel for the petitioner has relied upon the orders passed by Division Bench of this Court in **Shiv Mangal and another vs. State of Haryana, 2018(2) Law Herald 1708** wherein the Division Bench observed as under :-

“Insofar as, the other appeal i.e. CRA-S-1661-SB of 2015 is concerned, on behalf of appellants No.1 to 4, we find that the accused Basant was already arrested and had surrendered before the Court in other case. The trial Court itself observed in the order dated 26.02.2015 that it would not make much difference merely because he had surrendered, before imposition of penalty. The Court went by the fact that Basant did not appear and therefore the sureties were responsible taking harsh view of the matter. Admittedly, the accused Basant had already surrendered and it is thereafter, the penalty has been imposed. Therefore, the action of imposing penalty by the trial Court, in our opinion, seems to be cumbersome since the ultimate object that was sought to be achieved was to secure attendance of accused Basant.

In that view of the matter, since this was the first kind of incident qua appellants No.1 to 4 (in CRA-S-1661-SB of 2015), we think pragmatic and lenient view is required to be taken. In the result, we set aside the said order dated 26.02.2015 also qua appellants No.1 to 4 in CRA-S-1661-SB of 2015.”

4. He, thus, contends that the appellant having been served with the notice to produce the accused only for 11th of January, 2021 and the accused having been arrested on 25th of March, 2021, no material delay can be attributed to the present appellant. In order to hammer-forth his

contention, he relies upon the judgment passed by the Chhatisgarh High Court in **Girdharilal vs. State of M.P. (Now State of Chhattisgarh), 2011 (13) R.C.R.(Criminal) 175** to submit that lenient view should have been taken by the Trial Court and instead of saddling the petitioner with the liability of Rs.1.00 lac, a notional penalty ought to have been imposed.

5. Per contra, Mr. Cheema submits that the conduct of the accused is evident on record and default of the appellant is written large on the proceedings. However, he does not dispute the fact that keeping in view the fact that merely two months had passed from 11th of January, 2021 to 25th of March, 2021, penalty of Rs.1.00 lac is quite harsh.

6. Keeping in view that the incident *qua* the petitioner is a first and no material delay has been caused and the law laid down by Division Bench of this Court in **Shiv Mangal's** case (supra), penalty of Rs.1.00 lac is reduced to Rs.10,000/-.

7. Disposed off accordingly.

8. Pending application(s), if any, shall also stand disposed off.

December 19, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No