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

**CRA-S-2292-2019 (O&M)
Date of decision : 09.11.2022**

Ashok Kumar

...Appellant

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Namit Khurana, Advocate
for the appellant.
Mr. Bhupinder Singh, DAG, Haryana.

DEEPAK MANCHANDA, J.(Oral)

Appellant-Ashok Kumar has filed the present appeal to challenge the order dated 03.07.2019 (Annexure P-1) passed by learned Additional Sessions Judge, Yamuna Nagar whereby penalty of Rs.1,00,000/- under Section 446 of Cr.P.C was imposed upon him on account of failing to discharge his duty as a surety by not producing the accused-Vijay Kumar in Court, when he was on bail in a case FIR No.340 dated 08.09.2017 registered under Section 21 Narcotic Drugs and Psychotropic Substances Act, 1985, Section 18-C of Drugs & Cosmetics Act, 1940 and Sections 120-B and 201 Indian Penal Code, 1860 at Police Station Farakpur.

The brief facts of the case are that a case FIR No.340 dated 08.09.2017 was registered against three accused, namely, Vijay Kumar, Sandeep Kumar and Ombir in the aforementioned sections. Later on, accused-Vijay Kumar was granted the concession of interim regular bail during the trial of the case vide order dated 16.04.2018 by this Court, however, the said petition was dismissed later on. At the time of release of the accused-Vijay

Kumar, appellant-Ashok Kumar along with Seema Devi stood surety for him. Thereafter, warrant of arrest against the accused-Vijay Kumar were issued and notice under Section 446 Cr.P.C was also issued to appellant-Ashok Kumar. However, warrants of arrest issued against accused were received back unexecuted and appellant-Ashok Kumar also did not appear despite due service of notice, therefore, trial Court imposed penalty of Rs.1,00,000/- upon the appellant vide order dated 03.07.2019 (Annexure A-1). Hence this appeal.

Learned counsel for the appellant contends that the impugned order dated 03.07.2019 passed by learned Additional Sessions Judge, Yamuna Nagar is not sustainable. He submits that serious efforts were made by the appellant to get the accused to surrender and due to his constructive efforts, accused Vijay Kumar surrendered and was produced before the trial Court on 18.07.2019. He further contends that it is only the appellant upon whom the penalty of Rs.1,00,000/- has been imposed, whereas the other surety, namely, Seema Devi sought time and no such order against her imposing the penalty has been passed, and Additional Sessions Judge could have exercised his power under Section 446(3) Cr.P.C, but same has not been done, therefore, he prays for setting aside the impugned order dated 03.07.2019 (Annexure A-1).

On the other hand, learned State counsel submits that the order dated 03.07.2019 has been rightly passed as when accused Vijay Kumar did not appear, the Court was left with no other option except to pass the order under Section 446 of Cr.P.C.

I have heard learned counsel for the parties and have gone through the case file.

Section 446 of the Cr.P.C. provides the procedure when bond has

been forfeited and the same reads as under:-

“446. Procedure when bond has been forfeited.—(1)Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

*Explanation.—*A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3)The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4)Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5)Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

Section 446 Cr.P.C is meant to ensure that individuals who are released on bail have to provide reliable and responsible sureties to ensure their attendance and appearance during legal proceedings and if sureties wish and apply to be discharged from the responsibility, the said application can also be accepted as per the said provision. Further, Section 446 Cr.P.C provides the procedure when bond has been forfeited, consequences of its forfeiture and the manner for imposing penalty.

In the present case, accused-Vijay Kumar was produced by the present appellant on 18.07.2019 and the penalty upon him is imposed due to his non-appearance on 03.07.2019. After appearance before the Court by the said accused-Vijay Kumar, it was incumbent upon the court in terms of

mandated Section 444 (3) of the Code of Criminal Procedure to discharge the bond of the surety/appellant and to call upon the accused to find other surety and if he failed to do so, commit him to jail, but instead of doing so, Court passed the impugned order dated 03.07.2019 imposing penalty upon the appellant.

A perusal of the impugned order dated 03.07.2019 reveals that notice was served to the appellant, but despite due service, he did not appear, which resulted into passing of the order dated 03.07.2019. Even in the present appeal, no explanation with regard to non-appearance of the appellant has been furnished except that he belongs to poor family and fine/penalty upon him is very high and excessive. Though it is not disputed and the same has been recorded in the order dated 18.07.2019 that it is the appellant, who produced the accused-Vijay Kumar by moving an application for surrender, who is sent to judicial custody.

Keeping in view that provision as provided under Section 446 (3), the appellate or revisional Court as the case may be can always consider whether there are circumstances warranting remission of penalty, which further empowers the Court to remit any portion or even the whole of the penalty mentioned in a bail bond and enforce payment in part only. The sub-section gives discretion to the Court as a judicial discretion. There may be situations where the accused might have been prevented from appearance in Court due to valid reasons beyond his control. Instances may be numerous and variegated depending on factual situation which cannot be enumerated. Ordinarily, if the surety appears and succeeds in producing the accused or assists in arrest and production of the accused before the Court within a reasonable time, he is

entitled to some consideration. In such cases it will also be relevant to consider whether the surety acted irresponsibly and there was any connivance or negligence on the part of the surety, but in the present case, it is the appellant, who got surrendered the accused, therefore, he deserves leniency in reference to the penalty imposed upon him.

Thus, while exercising the discretion, this Court keeping in view the aforesaid fact and conduct of the appellant, is inclined to reduce the amount of penalty.

In view of the above, the appeal is partly allowed and the impugned order dated 03.07.2019 is set aside to the extent that the amount of penalty of Rs.1,00,000/- is reduced to Rs.15,000/-. Appellant is directed to deposit the amount of Rs.15,000/- with the trial Court.

(DEEPAK MANCHANDA)
JUDGE

09.11.2022
vanita

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