

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-41357-2022

Date of Decision: 28.10.2022

Jaginder Kaur

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. A.S. Samra, Advocate for the petitioner.

Mr. Hakam Singh, Assistant Advocate General, Punjab.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing order dated 27.07.2022 (Annexure P-2) passed by respondent No. 2-Deputy Commissioner-cum-District Magistrate, Barnala, whereby the petitioner was directed to deposit the amount of Rs.2,00,000/- and in case of failure to do so, it was ordered that proceedings under Section 69 of the Punjab Land Revenue Act, 1887 will initiated against the petitioner.

Briefly stated that petitioner stood surety of her brother-in-law, namely, Bahadar Singh S/o Mukhtiar Singh resident of village Jodhpur, Tehsil and District Barnala, for a sum of Rs.2,00,000/- who was released on parole for eight weeks due to sudden insurgence of second wave of Covid-19. Bahadar Singh, was bound to appear before the jail authorities on 08.05.2021, on which date he appeared before the

concerned jail authorities and was asked to get his Covid-19 report up to 18.05.2021. Bahadar Singh, himself surrendered on 18.05.2021 and was sent to District Jail, Barnala on 19.05.2021. On account of non-appearance/surrender by Bahadar Singh, a show-cause notice was issued to the petitioner by respondent No. 2 and in response thereto, petitioner had filed her reply on 01.09.2021, wherein it had specifically been pleaded that the parole of Bahadar Singh was extended by the jail authorities till 18.05.2021, for the reason that when he appeared before the jail authorities on 08.05.2021, he did not get his Covid-19 report. Thereafter, on 18.05.2021, Bahadar Singh surrendered himself before the jail authorities. On 22.06.2022, respondent No. 2-Deputy Commissioner-cum-District Magistrate, Barnala, issued a letter to the petitioner vide memo No. 229 dated 24.06.2022 (Annexure P-1), for her personal appearance before him on 30.06.2022 at 10:00 A.M. In pursuance thereto, the petitioner had appeared before respondent No. 2 and thereafter, impugned order dated 27.07.2022 (Annexure P-2) was passed. Hence the present petition.

Learned counsel for the petitioner submits that in the absence of any connivance between the petitioner and the convict, who jumped parole and did not surrender, 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 judgments of this Court in ***Dalvir Vs. State of Haryana, CRM-M-15296-2012***, decided on 01.02.2013; ***Harbhajan Singh Vs. State of Punjab, 2008(4) RCR (Criminal) 410*** and ***Raghubir and another Vs.***

State of Haryana and another, 2022 (1) RCR (Criminal) 251. He further submits that convict-Bahadar Singh, had surrendered himself before the jail authorities on 18.05.2021 and now, is undergoing the sentence awarded to him in District Jail, Barnala. He, therefore, prays that the present petition be allowed and the impugned order dated 27.07.2022 (Annexure P-2) be quashed.

While opposing the prayer of the petitioner, learned counsel for the State vehemently contended that there is no illegality in the order, passed by the District Magistrate, Barnala. He further submits that since the conduct of the petitioner is wholly irresponsible, she must suffer for the laxity on her 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 27.07.2022 (Annexure P-2) passed by the learned District Magistrate, Barnala, is harsh on the face of it, particularly when there is no allegation on record about connivance of petitioner 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."

Perusal of the impugned order dated 27.07.2022

(Annexure P-2), passed by the learned District Magistrate, Barnala, would show that there was no allegation against the petitioner that she, as a matter of fact, instigated or helped the convict, in any manner, for not surrendering in time. 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 22.07.2022 (Annexure P-2), passed by the learned District Magistrate, Barnala, is ordered to be modified to the extent that instead of Rs.2,00,000/- to be forfeited to the State, amount is reduced to Rs.20,000/-. The petitioner would now pay Rs.20,000/-.

In view of the above, the instant petition is partly allowed. The impugned order is modified, accordingly.

October 28, 2022
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(ASHOK KUMAR VERMA)
JUDGE

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