

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222(1)

CWP-25735-2019

Reserved on :18.11.2022

Date of Decision:06.12.2022

Deepak

.....Petitioner

Versus

State of Haryana and others

.....Respondents

222(2)

CWP-26335-2019

Sanjay

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Rahul Deswal, Advocate,
for the petitioner(s).

Mr. Vivek Chauhan, Addl. A.G., Haryana.

VINOD S. BHARDWAJ , J.

Both these writ petitions are being disposed of by a common order since learned counsel for the respective parties agree that the dispute involved in both the cases is identical and the same can be decided by a common order. However, for the facility of reference, facts have been extracted from CWP-25735-2019, titled as “Deepak Versus State of

Haryana and others”.

2. Challenge in the present writ petitions is to the impugned order dated 28.03.2019 (Annexure P-10) whereby the petitioners have been directed to deposit a sum of ₹3,00,000/- each against forfeiture of bail bonds furnished by the petitioners for bail of convict Subhash Chand.

3. The facts of the case are that one Subhash Chand son of Nanak Chand was accused in a case bearing FIR No.117 dated 05.06.2007 registered under Sections 468, 471, 120-B IPC at Police Station Hathin, District Palwal wherein he was convicted and sentenced to undergo rigorous imprisonment for a period of three years along with fine of ₹1,000/- for the commission of offences punishable under Sections 468, 471, 120-B IPC. His appeal was dismissed by the Additional Sessions Judge, Palwal on 17.02.2017 and the Criminal Revision No.854-2017 was also dismissed by the High Court vide judgment dated 28.07.2017. Special leave petition filed by the convict Subhash Chand was also dismissed by the Hon'ble Supreme Court. The convict Subhash Chand at present is thus undergoing his imprisonment in the District Jail, Faridabad. He applied for agricultural parole with the respondent-authorities which was allowed vide order dated 11.02.2019. Petitioner-Deepak in CWP-25735-2019 and petitioner-Sanjay in CWP-26335-2019 stood as surety and furnished bonds for a sum of ₹3,00,000/- each for the release of said Subhash Chand. The convict Subhash Chand was accordingly released on agricultural parole for a period of six weeks from 08.02.2019 to 23.03.2019.

4. That on 19.03.2019, i.e. four days prior to the expiry of his parole, convict Subhash Chand suffered severe pain in his abdomen and seeing his serious condition, he was taken to the Civil Hospital, Palwal.

The doctor admitted the convict Subhash Chand and recommended surgery of Hernia. The same was also performed at the Civil Hospital, Palwal on the same day i.e. 19.03.2019. The medical records in this regard have also been appended to the present writ petition.

5. Since the parole was to come to an end on 23.03.2019 and the health condition of the convict Subhash Chand had not improved, the petitioner-Deepak(brother of convict) submitted an application for extension of parole to the jail authorities. However, when no action was taken thereupon, the convict Subhash Chand immediately filed CWP-8051-2019 on 20.03.2019 before this Court and a request was made for the matter to be taken up during the holidays since the parole was to expire on 23.03.2019. The request was, however, declined for fixing the case on 20.03.2019 and the matter was fixed for hearing on 26.03.2019 when notice of motion was issued for 02.04.2019 and the same was then adjourned to 04.04.2019. In the meanwhile, convict Subhash Chand was discharged from the Civil Hospital on 26.03.2019 and was advised 07 days strict bed rest by the attending Government doctor. The convict Subhash Chand surrendered with the jail authorities on the 7th day itself i.e. on 01.04.2019.

6. The convict Subhash Chand having surrendered when the above said writ petition came up for final hearing on 04.04.2019, the said writ petition i.e. CWP-8051-2019 was dismissed with liberty to the convict Subhash Chand to explain the delay to the jail authorities who were to thereafter pass an order in accordance with law.

7. The matter was thereafter considered by the jail Superintendent and a punishment of forfeiture of three days earned remissions was imposed upon him vide order dated 02.04.2019 passed by the jail Superintendent,

Faridabad under Section 8(3)(A) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter to be referred as “the Act of, 1988”). The said punishment imposed upon the convict Subhash Chand was judicially appraised by the Sessions Judge, Faridabad and the same was upheld. The District Magistrate, Palwal however also passed an order on 28.03.2019 holding that as the convict Subhash Chand had violated the conditions of parole, accordingly the bail bonds to a sum of ₹3,00,000/- each furnished by the petitioners were ordered to be forfeited. In the event of the same not being deposited, the proceedings were ordered to be initiated for recovery after declaring the amount to be recoverable as arrears of land revenue. Hence, the present petitions.

8. Reply of the respondents had been filed wherein the factual matrix noticed above has not been disputed. It has been contended that the District Magistrate had passed the order granting parole whereby the convict Subhash Chand was to surrender before the jail authorities on 23.03.2019 before noon, however, he surrendered on 01.04.2019 and hence violated the terms. Hence, there was an overstay of 09 days by convict-Subhash Chand due to which the bail bonds have been rightly forfeited.

9. I have heard arguments advanced by learned counsel for the respective parties wherein they reiterated the averments noticed above.

10. The grant of parole is governed by the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Section 8 of the Act of 1988 prescribes liability of a prisoner to surrender on expiry of the release period and consequences of overstaying. Section 9 of the said Act deals with the penalty for failure to surrender while Section 10 deals with the power of the State Government to make Rules. Section 10(2)(c) deals with the power of

the State Government to make Rules pertaining to the forfeiture of the amount of bonds. Further, the Government of Haryana notified the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 in exercise of the powers conferred by Sub-Section 1 read with Sub-Section 2 of Section 10 read with Sections 3 and 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Rule 3 thereof deals with the procedure for temporary release while Rule 8 talks about 'sufficient cause' in terms of Section 3(1)(d) and Section 10(2)(d). Rule 10 deals with the consequences of overstay and Rule 11 relates to the bonds. The relevant provisions of the Act of 1988 and Rules of 2007 are extracted as under:-

“8. Liability of prisoner to surrender on expiry of release period and consequences of overstaying.-

(1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer incharge of the prison from which he was released to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely :-

(a) a maximum cut of five days remission for each day of overstay;

(b) stoppage of canteen concession for a maximum period of one month;

(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from higher to a lower case or grade.

9. Penalty for failure to surrender.-

(1) Any prisoner who is liable to be arrested under sub-section (2) of section 8, shall be punishable with imprisonment of either description which may extend to [three years but shall not be less than two years].

(2) An offence punishable under sub-section (1) shall be deemed to be cognizable and non-bailable

Explanation.- The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.

10. Power to make rules.-

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the execution by the prisoner (including his sureties) of bond for his good behaviour during the release period and for his surrender on the expiry of such period;

(b) the amount for which and the form and manner in which such bonds shall be furnished;

(c) the forfeiture of the amount of bonds in case of breach of any of its terms;

(d) the conditions on which and the manner in which prisoners may be released temporarily under this Act;

(e) the manner in which the District Magistrate or any other officer may be consulted in the matter of temporary release of a prisoner;

(f) the extent to which and the manner in which journey expenses of poor prisoner shall be borne by the State Government;

(g) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

Rule 3. Procedure for temporary release, sections 3, 4, 10(1), 10(2), 10(2)(b), 10(2)(d) and 10(2)(e).-

(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act, shall make an application in form A-I or form A-2, as the case may be, to the Superintendent of Jail. An adult member of the prisoner's family may also make such an application.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate who shall forward the case with his recommendations to the Director General for grant of parole or otherwise. The releasing authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form-B ordering the temporary release of he prisoner specifying therein -

(i) the period of release;

(ii) the place or places which the prisoner is allowed to visit and

(iii) the amount of surety bond.

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Rule 8. Sufficient cause. sections 3(1)(d) and 10(2)(d).-

Under section 3(1)(d) "sufficient cause" may be considered from amongst the following reasons, namely:-

(i) admission in school/colleges/professional institutions of the dependents of the convict;

(ii) medically scheduled delivery of wife of the convict;

(iii) house repairs/new construction of house owned by the convict. Parole for house repair shall be granted only once, in three years;

(iv) marriage of prisoner's brother's son or daughter to be celebrated in case his brother is not alive.

Rule 10. Consequences of overstay. section 10(2)(d).-

A convict, who does not surrender in jail on the due date and time after availing the granted parole/furlough his further parole/furlough shall be considered as under;

(i) if the convict overstays 15 days of his parole/furlough, his parole/furlough case shall not be entertained by the Superintendent of Jail earlier than one year from the date of his surrender/arrest;

(ii) if the convict overstays 30 days or more of his parole/furlough his case shall not be entertained by the Superintendent of Jail earlier than two years from the date of his surrender/arrest.

Rule 11. Bonds. sections 10(2)(a) and 10(2)(b).-

(1)(a) On receipt of the release warrant, the Superintendent of Jail shall inform the prisoners concerned and such member of the prisoner's family as prisoner may specify in that behalf for making arrangements for the execution of the personal bond and surety bond in Form-C and D respectively for securing the release. A copy of the release warrant shall also be sent by the Superintendent of Jail to the District Magistrate.

(b) The Superintendent of Jail shall also immediately forward to the Officer-Incharge of the police station within whose jurisdiction the place or places to be visited by the prisoners is or are situated, a copy of the warrant and release certificate in Form-E. The Officer Incharge of the Police Station shall keep a watch of the conduct and activities of the Prisoners.

(2) (a) In case of convicts of offences of murder, rape, rape with murder, murder for dowry, dacoity and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) or any other heinous crime surety shall be from one lac rupees to two lac rupees as per discretion of the releasing authority accepting the surety bonds etc.

(b) In other cases surety shall be from 'twenty thousand rupees to one lac rupees as per the discretion of the releasing authority accepting the surety bond etc.

(3) Under section 3(2)(b) a convict shall be granted parole only for once either under section 3(1)(b) or section 3(1)(d) and not for both separately during the calendar year except as provided under rule 8 as above."

(emphasis supplied)

11. It is apparent from the perusal of the above that Section 8 of the Act of 1988 requires a prisoner to surrender before the Superintendent of Jail from where he was released and in the event he does not surrender, he may be arrested without a warrant. Section 8(3) stipulates a contingency where the prisoner surrenders to the Superintendent of Jail within a period of ten days of the date on which he should have so surrendered but fails to satisfy the Superintendent of any sufficient cause which prevented him from surrendering immediately on the expiry of the period for which he was released, the penalty prescribed therein may be awarded after affording a

reasonable opportunity to the prisoner of being heard. Section 9 comes into play only in an eventuality where a person is liable to be arrested under Section 8(2) and the same provides for penalty for failure to surrender.

12. It is also evident that even though the provisions of Section 10(2)(c) of the Act empowers the State Government to frame Rules relating to the forfeiture of the amount of bonds, however, the Rules of 2007 notified by the State do not provide for the forfeiture of the amount of bond as stipulated under Section 10(2)(c) of the Act.

13. Rule 10 prescribes the consequences of overstay under Section 10(2)(d) of the Act, 1988 while Rule 11 deals with the bonds in reference to Section 10(2)(a) and Section 10(2)(d) pertaining to the execution of the bond as well as surety; the amount as well as form in which such bonds shall be furnished. The said Rule also does not deal with the issue of forfeiture of the bonds in case of breach of any of its terms. Hence, the Act of 1988 and Rules of 2007 have not authorized or approved forfeiture of bonds or security.

14. Apparently, the respondents seem to have taken recourse to the provisions of the Code of Criminal Procedure (hereinafter referred as “Cr.P.C.”) for ordering forfeiture of the bond/surety so furnished. The provisions relating to submission of bonds fall in Chapter XXXIII of the Cr.P.C and are extracted as under:-

“441. Bond of accused and sureties.

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person

shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

444. Discharge of sureties.

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

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: 1 [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.

446A. Cancellation of bond and bail bond.

Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition,—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.”

15. Bonds furnished by a person contain the conditions of availing a release and consequence of breach and are required to be furnished to apprise that in event of the person who is being released commits any breach of the conditions, the conditions of bond shall be enforced. It may also contain sureties to be furnished and the obligation of the sureties is also mentioned. The failure on part of the sureties to ensure compliance of the conditions of the bond would render them fiscally liable for the sum assured by them.

16. Section 444 Cr.P.C. contains discharge of sureties and stipulates under Sub-Section (3) that where the person released is produced

pursuant to the warrant or on his voluntary surrender, the bond may be ordered to be discharged either wholly or in so far as it relates to the applicants.

17. Section 446 Cr.P.C. deals with the procedure after bond has been forfeited and affords opportunity as to why penalty be not imposed. While Section 446-A Cr.P.C. provides for cancellation of bond and bail bond.

18. The order passed by the District Magistrate does not mention about the powers invoked by him. The release of the convict on probation was in exercise of the powers under the Act of 1988 and the Rules framed thereunder. The legislature was undoubtedly conscious of the aspect of forfeiture of the bonds/sureties under Section 10(2)(c) thereof and yet chose to not provide for forfeiture while notifying the Rules of 2007. It however did stipulate the consequences of overstay and punishment thereof.

19. The Act of 1988 is a beneficial provision which extends certain benefits to a prisoner on his showing good conduct. At the same time, the Criminal Procedure Code is not to be viewed as a residuary statute to apply even to areas that stand occupied by a special statute. The scheme of Cr.P.C. shows that it applies to “Inquiries”, “Investigation” and “Trials” and various ancillary aspects that relate to the above. It does not stipulate “Parole” or “Furlough” which are provided for under a separate statute.

20. The legislature seemingly has chosen not to provide for forfeiture of surety or bonds and has prescribed Penalty/Punishment to the convict for overstay. The legislature stopped at that and preferred not to provide for forfeiture of bonds. The object, it seems, is to inflict punishment only on the violator and not the surety.

21. The authorities thus had the option to proceed either under the Act of 1988 or under the general laws. Once the authority has invoked its statutory power under special statute and passed an order thereunder, it may not be justified to thereafter also invoke general laws for the same violation. The State has already imposed punishment on the convict for his overstay, imposition of punishment separately for forfeiture amounts to vexing him twice for the same offence.

22. The facts of the present case are not in dispute including the fact that the convict Subhash Chand was admitted in the Civil Hospital, Palwal and had been operated for Hernia. Prompt application for seeking extension of parole by placing reliance on the medical certificate was made to the jail authorities and a writ petition for seeking extension was also filed before this Court. It is also not in dispute that the convict Subhash Chand voluntarily surrendered before the jail authorities even before any warrant for securing his presence was issued. There is also no evidence on record to suggest that the convict Subhash Chand is guilty of having committed any other jail offence during his period of sentence.

23. Once the medical condition of the convict Subhash Chand is not a subject matter of dispute and sufficient circumstances have been put to satisfy the judicial conscience are on the file showing that absence of the convict Subhash Chand was for the reasons beyond his control and that he surrendered to the jail authorities even before issuance of any warrant, the order passed by the District Magistrate, Palwal directing forfeiture of the surety of ₹3,00,000/- each submitted by the petitioners would thus be harsh; disproportionate and onerous considering the fact that the petitioners are agriculturists and would thus be amongst marginalized sections of the

society.

24. Further, aid may be taken from Section 444(2) Cr.P.C. which stipulates that in the event of voluntary surrender by the person or even on appearance pursuant to the warrant, the Magistrate shall direct the bond to be discharged. Thus, the intent of surety and bond is not to effect recovery for each breach, rather, it is to ensure that a convict/accused is brought to the Court of law and subject himself to the rule of law. The coercive measures adopted by the State in light of the antecedent of the accused and the circumstances noticed above, it would seem inequitable and travesty of justice in directing recovery to the tune of ₹3,00,000/- each.

25. This Court in the matter of **Amit Versus State of Haryana and another** in Criminal Appeal No.CRA-S-5404-SB-2015 (O&M), decided on 10.05.2019 had held that where the circumstances in which a person was forced to overstay in a foreign country beyond permission of the Court, the order of forfeiture of bank guarantee would be inappropriate.

26. Further, this Court in the matter of **Sanjeev Kumar Versus State of Punjab, 1998(3) RCR (Criminal) 471** had held that order of warrants had been issued to a convict on account of overstay ignoring the medical certificate produced by the convict and was thus liable to be set aside.

27. Hence, taking into consideration the totalities of circumstances noticed above, it would be appropriate to set aside the order dated 28.03.2019 passed by the District Magistrate, Palwal directing forfeiture of the surety/bail bonds of ₹3,00,000/- each from the petitioners and to reduce the penalty of forfeiture to a sum of ₹5,000/- each to be deposited by both

the petitioners within one month of receipt of certified copy of this order.

28. The petitions are accordingly disposed of as partly allowed.

December 06, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No