

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

(234)

CRR-259-2020 (O&M)
Date of Decision: 18.04.2023

Ramesh

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. A.P.S. Nain, Advocate, for
Mr. Vikrant Hooda, Advocate, for the petitioner.

Mr. Karan Singla, Advocate, for
Mr. Naresh Singla, Advocate, for the complainant.

Mr. Ramesh Kumar Ambavta, AAG Haryana

HARKESH MANUJA, J.

(1) By way of present revision petition challenge has been made to an order dated 18.12.2019 passed by the Ld. Sessions Judge, Jhajjar whereby the application moved by the present petitioner for the discharge of surety and for remitting the amount which was ordered to be recovered from the present petitioner was dismissed..

(2) Brief facts of the case as projected in the petition are that the present petitioner and one Nardev stood surety for the accused namely Sanjeev @ Sanju and the Ld. Sessions Judge issued non bailable warrants against the said accused for his non appearance before the court and thereafter the said accused was declared PO vide order dated 05.07.2019 and the Ld. Court later issued warrant of recovery of Rs.2.00 lakhs each from both the sureties vide order dated 28.03.2019.

(3) Thereafter, sincere and perpetual efforts were made by the

petitioner/ surety for getting the said accused apprehended and as a result of the efforts of the petitioner/surety the accused appeared before the Ld. Sessions Judge on 12.09.2019 with an application for the surrender. After that present petitioner moved an application for discharging the surety and for remitting the amount which was ordered to be recovered from him. However, Ld. Sessions Judge, Jhajjar dismissed the application of the present petitioner vide order dated 18.12.2019. Present revision petition has been filed impugning this order dated 18.12.2019.

(4) Learned Counsel for the petitioner submits that the accused, namely, Sanjeev @ Sanju already stands convicted vide judgment dated 16.12.2019 brought on record as Annexure-P1. He further submits that the petitioner is a poor man having 1.25 acre of land who made all sincere efforts to make Sanjeev @ Sanju surrender before the trial court and, as such, prays for setting aside the impugned order dated 18.12.2019, whereby his surety bonds amounting to Rs.2 lakhs were ordered to be forfeited. In support of his contention, he places reliance upon judgment of Hon'ble the Supreme Court in case titled as **“Istkar vs. The State of Uttar Pradesh and another”**, passed in Criminal Appeal No.2034-2022.

(5) On the other hand learned State Counsel as well as the Counsel for the complainant submit that as a surety of the accused in FIR No.497/2014, petitioner should have been aware about its obligation and when the accused in the above mentioned FIR was declared PO, necessary consequences have to follow in the form of recovery of Rs.2.00 lakhs

(6) I have heard learned counsel for all the parties and gone through the paper book as well and I find substance in the arguments raised by learned Counsel for the petitioner. This is an admitted fact that the accused in FIR number 497/2014, ultimately appeared before the learned Session Judge on

12.09.2019 and vide judgment dated 16.12.2019, he has even been convicted in that case. It cannot be denied that the purpose for which the surety bond was executed was fulfilled, though belatedly. In such circumstance, Judgment cited by the learned Counsel for the petitioner gains significance wherein Hon'ble Apex Court observed that it is explicitly stipulated under Proviso (b) to Section 117 that the amount of bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. It is pertinent to mention here that section 117 (b) of Cr.P.C. is para materia with section 440(1) in the context of bail bonds which is reproduced herein under:

“440. Amount of bond and reduction thereof.—(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.”

Further, while discussing Section 446 Cr.P.C., Hon'ble Court also held that even when a person fails to show sufficient cause as to forfeiture of the bond amount, the Court is not bound to direct payment or recovery of the entire bond amount and the Court can exercise its discretion and remit some portion of the bond owing to the nature of the offence, status and position of the person, and having regard to other facts and circumstances of the case, also when the amount of bond is unduly excessive.

Finally, Hon'ble Court after holding that amount of bond i.e. Rs. 5,00,000/-, is excessive, reduced it to nominal amount of Rs. 5,000. Relevant para is reproduced as below:

“16. Therefore, looking to the totality of circumstances; the nature of alleged acts and the amount of the bond; the fact that the purpose for which bond was executed had already been achieved; that there was no imminent threat to breach of public peace from appellant; and the fact that the appellant is a daily-wage earner and would not have proper means to arrange the bond amount, we are of the view that, forfeiture of an amount of Rs. 5,00,000/-, on ground of obstructing a

public servant while on duty, that too under Section 107 CrPC, is exceptionally high and beyond raison d'être of Section 107 as also Chapter VIII of the Code. We also find that the bond amount of Rs.5,00,000/- is excessive even within the contours of Proviso (b) to Section 117 CrPC itself, regardless of the facts of the case."

(7) After a careful purview of the facts and circumstances of the present case, it can be satisfactorily said that the ratio of the judgment in Istkar's case (supra) may not be directly but substantially is applicable in the present case as well as :

- petitioner in present case also owns merely 1.25 acre of land and therefore, considering his means, it will be difficult for him to arrange the bond amount of Rs.2 Lakhs.
- accused person who was declared as P.O. subsequently surrendered and has even been convicted and thus the ultimate purpose have been established.
- More than that, there is no allegation at all against the petitioner that he was even connived with the accused jumping out the bail.

(8) In view of the discussion held above And considering the facts and circumstances of the present case, the present revision petition is allowed to the extent that the bond amount to be deposited by the petitioner is reduced to Rs. 5,000/- (Rupees Five Thousand) and he is directed to deposit the amount within four weeks from today.

(9) Pending miscellaneous application(s), if any, shall also stand disposed of.

18.04.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No