

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-S-1027-2022(O&M)

Date of Decision:-04.05.2023

Malook Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Yashpal Thakur, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General,
Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The appeal is directed against the order dated 16.12.2021 passed by Judge, Special Court, Fatehgarh Sahib vide which the Court has imposed a penalty of Rs.50,000/- equivalent to the surety amount upon the appellant.

2. The brief facts of the case are that the appellant stood as surety for one Gurpal Singh @ Bhalla who was an accused in case FIR No.91 dated 16.04.2019 under Sections 15, 18, 29 of NDPS Act registered at Police Station Sirhind, District Fatehgarh Sahib. The accused Gurpal Singh @ Bhalla absented himself from the Trial and, therefore, the impugned order came to be passed against the appellant which is under challenge in the instant appeal.

3. The Counsel for the appellant contends that the appellant had stood surety for Gurpal Singh @ Bhalla in case FIR No.91 dated 16.04.2019 under Sections 15, 18, 29 of NDPS Act registered at Police Station Sirhind, District Fatehgarh Sahib. Initially the accused had been attending the hearings but subsequently chose not appear before the Trial Court and, therefore, proclamation

proceedings were initiated against him. Thereafter, the impugned order came to be passed and a penalty of Rs.50,000/- was imposed upon the appellant. However, on the efforts made by the appellant, Gurpal Singh @ Bhalla surrendered before the Trial Court as was apparent from the orders of the Trial Court. It is his contention that the appellant is an agriculturist and in good faith had stood as a surety. There was no evidence that the appellant had connived with the accused or hatched a conspiracy so as to facilitate his escape from the trial of the case. There was also no evidence that the appellant had any knowledge about the likelihood of the accused absconding. He thus contends that the impugned order was liable to be set aside as no fault could be found with the conduct of the appellant.

4. The Counsel for the State on the other hand contends that the impugned order has rightly been passed and, therefore, there was no ground for interference by this Court. He however, while referring to the reply dated 4.5.2023 admits that the appellant had made the accused Gurpal Singh @ Bhalla surrender on 30.03.2022.

5. I have heard counsel for the parties.

6. Admittedly, the appellant stood as surety for Gurpal Singh @ Bhalla in FIR No.91 dated 16.04.2019 under Sections 15, 18, 29 of NDPS Act registered at Police Station Sirhind, District Fatehgarh Sahib. After appearing for sometime Gurpal Singh @ Bhalla absconded from the Trial consequent to which the impugned order came to be passed. There is absolutely no evidence to suggest that the appellant facilitated his escape or connived with him (accused-Gurpal Singh @ Bhalla) so as to enable him to disassociate himself from the Trial. On the contrary, subsequently on the efforts of the appellant, Gurpal Singh @ Bhalla surrendered before the concerned Court. In the case of ***Mohd. Kunju Vs. State of Karnataka, 1999(4) RCR (Criminal) 726 (SC)***, the accused had fled from India and had gone to a foreign country. The Hon'ble Apex Court held that there was nothing to suggest that the surety had any remote scent, that the accused was

preparing to escape from India, nor was there any evidence to suggest that the surety had connived with the accused, who jumped the bail. Under these circumstances, the Apex Court reduced the penalty to a sum of Rs.5,000/- from the amount of Rs.50,000/- which was imposed on the surety by the Trial Court. In ***Madhu Limaye Vs. Metropolitan Magistrate, 1984 (Supplementary) Supreme Court cases, 699***, a three judge Bench of the Apex Court, reduced the penalty to a nominal sum of Rs.100/- in a case, in which the accused, some foreign nationals, escaped from India and were never arrested. In the case of ***Harbhajan Singh Vs. State of Punjab 2008(4) RCR (Criminal) 410*** the penalty imposed of Rs.40,000/- was reduced to Rs.20,000/-.

7. In view of the facts and circumstances as enumerated above and also the observations made in the aforementioned judgments, the reduction in the amount of penalty is warranted in the instant case. Therefore, the appeal is partially accepted. The order dated16.12.2021 is modified to the extent that the penalty of Rs.50,000/- imposed upon the appellant-surety is reduced to Rs.10,000/-. The Chief Judicial Magistrate, Fatehgarh Sahib is directed to ensure compliance of this order.

8. The appeal is partially accepted in the aforesaid terms.

(JASJIT SINGH BEDI)
JUDGE

May 04, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No