

CRA-S-132-SB-2005

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

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Date of Decision:-20.09.2023

Harchand Singh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Ms. Sarla Chaudhary, Advocate
for the appellant.

Mr. Tanuj Sharma, AAG, Haryana.

ALOK JAIN, J. (Oral)

1. The present appeal has been filed *inter alia* challenging the order dated 20.09.2004 passed by Additional Sessions Judge, Fatehabad, whereby, the appellant who stood as a surety for an accused-Kaushalya @ Sheela was imposed with a penalty of Rs. 35,000/-. The said penalty which was imposed on him being surety, was duly paid by him.

2. Learned counsel for the appellant has submitted that without recording a finding to the extent that the appellant had connived with the accused, the learned Court below fell in error to impose such a heavy penalty vide impugned order. She further submits that the appellant made

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his best efforts to produce the accused-Kaushalya @ Sheela but since, she had left the village, he was handicapped to produce her.

3. Be that as it may, the said Kaushlaya has already been declared a proclaimed offender and law is taking its course.

4. *Per contra*, learned State counsel has vehemently opposed the averment made by the appellant and has submitted that the surety was under bounden duty to produce the accused on each and every date, otherwise, the very purpose of standing a surety is defeated.

5. Since, it is admitted by the appellant himself that he failed to produce the accused; the surety had to be forfeited. Accordingly, the application under Section 446 Cr.P.C. for discharge of surety was disposed of by imposing the said penalty of Rs. 35,000/- vide impugned order dated 20.09.2004..

6. I have heard learned counsel for the parties at length and perused the lower court record and it transpires that the accused-Kaushalya @ Sheela was sought to be produced before the trial Court for which the trial Court had taken all the appropriate measures including issuance of bailable warrant, non-bailable warrant and subsequently, accused-Kaushalya @ Sheela was also declared a proclaimed offender vide order dated 17.01.2005.

7. At this stage, learned counsel for the appellant has prayed that the said amount be reduced, so that some respite could be given to the appellant.

8. It is settled principle of law as held by the Hon'ble Supreme Court of India in **1999 (4) R.C.R. (Criminal) 726**, whereby, discretion had

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been granted to the Court to consider the reduction of amount, in case, it is found that the surety did not connive with the accused for jumping the bail.

The relevant extract is reproduced as under:-

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 juridically and for good reasons. Learned counsel cited the decisions of this Court in **Madhu Limaye v. Metropolitan Magistrate and ors., 1984 Supple. 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.*

16. *In the above circumstances we are of the view that some remission can be granted to the appellants. To meet the ends of justice a remission is granted to the extent that each appellant need pay Rs. 5,000/- as penalty. If the appellants have already paid any amount in excess thereof they can apply and get refund of the excess portion from the court concerned. Ap- peals are disposed of accordingly”.*

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The Hon’ble Punjab and Haryana High Court also held on the same lines in **2004 (3) R.C.R. (Criminal) 603**. The relevant extract is reproduced as under:

10. *“However, I find some force in the second of contention of the learned counsel for the appellants, where he pleaded for remission of the penalty. The Hon’ble Supreme Court in Mohammed Kunju’s case (supra), has held that no doubt Section 446(3) of the Code of Criminal Procedure 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”.*

9. In light of the settled principles of law applied to the facts of the present case, the appeal stands allowed and the penalty of Rs.35,000/- as imposed on the appellant vide impugned order is reduced to Rs.25,000/-.

10 Learned counsel for the appellant, at this stage submits that, in fact, the entire amount had already been deposited, therefore, on moving of an appropriate application, the amount of Rs.10,000/- be refunded to the appellant against proper receipt and after following the due procedure of law.

11. Accordingly, the present appeal stands allowed, with the above said terms.

(ALOK JAIN)
JUDGE

September 20, 2023
Parul

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