

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1167-SB-1999

Date of Reserve: 07.05.2024

Date of Decision:08.05.2024

Rawel Singh

...Appellant

Vs.

Punjab State

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Nayandeep Rana, Advocate
as Amicus Curiae for the appellant.

Mr. Arjun Sheoran, DAG, Punjab.

N.S.Shekhawat J.

1. The appellant has filed the present appeal under Section 449 of the Code of Criminal Procedure with a prayer to set aside the order dated 13.11.1999 passed by the Court of Sh. Gurnam Singh, the then Additional Sessions Judge, Hoshiarpur, whereby a penalty of Rs.50,000/- i.e. the amount of surety bond, was imposed on him and the same was ordered to be recovered from him as arrear of land revenue.

2. As per the case set up by the prosecution, on 26.08.1999, Baljinder Singh accused was granted the concession of interim bail on his furnishing a personal bond in the sum of Rs.50,000/- with two sureties each of the like amount and was directed to surrender before the Trial Court on 24.09.1999. The appellant and one more person namely Meet Singh had stood sureties for Baljinder Singh in the sum of Rs.50,000/- each. However, on 24.09.1999, Baljinder Singh did not surrender in the Court and his bail bonds and surety bonds were cancelled and forfeited to the State and was ordered to be

summoned through non-bailable warrants. However, notice was issued to the appellant and another surety to produce Baljinder Singh, accused. As per the prosecution, the appellant and another surety were given opportunities and they could not produce Baljinder Singh, accused. Ultimately, they were directed to pay a sum of Rs.50,000/- each as penalty i.e equal to the amount of the surety bond.

3. Learned counsel for the appellant submitted that in fact, Baljinder Singh, accused was granted the concession of interim bail vide order dated 26.08.1999 in case FIR No.78, dated 28.07.1999, under Section 15 of the NDPS Act, registered at Police Station Garhshankar. On 26.08.1999, he was granted interim bail by the Trial Court and was directed to surrender on 24.09.1999. However, he did not appear before the Trial Court and on 16.10.1999 non-bailable warrants were ordered to be issued against him. Since non-bailable warrants issued against Baljinder Singh, accused were received back unexecuted, the proclamation was issued against him on 30.10.1999 and was declared as proclaimed offender on 13.12.1999. Thereafter, the orders were issued for attachment of his property and the warrants for his arrest were also issued. At this stage, a report was received that Baljinder Singh, accused had been detained in Central Jail, Ludhiana in some other case and he was produced before the Trial Court on 09.09.2000 from Central Jail Ludhiana. Learned counsel for the appellant further submits that since Baljinder Singh, accused was confined in Central Jail, Ludhiana in some other case and this fact was not within the knowledge of the appellant as well as the Trial Court. Consequently, the appellant could not produce the accused and no fault can be attributed to him. Learned counsel further contends that even in the present case, neither any

show cause notice was ever issued to the appellant as to why his surety to the tune of Rs.50,000/- be not forfeited nor any satisfaction was recorded by the Trial Court before forfeiting the bond, in the present case. Learned counsel further contends that the Court was under a legal duty to record the grounds of proof of forfeiture of the bond and a show cause notice should have been issued to the appellant as to why the surety amount should not be forfeited. After issuance of notice, if sufficient cause has not shown by a surety, the Court may impose penalty on the surety. He further refers to the law laid down by the Allahabad High Court in the matter of “Mahmood Hasan and Another Vs. State” criminal appeal No.2610 of 1975, decided on 01.08.1979, wherein it was held as follows:-

“The record does not show that before forfeiting the surety bonds the Court below gave any notice to the appellants to show cause as to why the surety bonds be not forfeited. The rule of natural justice requires that before any adverse order is passed the person concerned should be given an opportunity of being heard. No such opportunity was given to the appellants. Therefore, the appellants could not be called upon to pay the sum of Rs.500.-”

4. Learned counsel for the appellant further submits that in the present case, Baljinder Singh accused was in custody in some other case in Central Jail, Ludhiana. This fact, was neither in the knowledge of the appellant nor the Trial Court was aware of the said fact. Even the prosecution did not lead any evidence to show that Baljinder Singh was confined in some other case in another jail. Apart from that, Baljinder Singh, lateron, was taken in custody through production warrants from Central Jail, Ludhiana on 27.09.2000 and was also convicted by the Trial Court.

5. On the other hand learned State counsel submits that in the present case, the appellant had furnished surety to the tune of Rs.50,000/- and was legally bound to produce the accused, Baljinder Singh on 24.09.1999. Since he failed to produce the Baljinder Singh, accused in the present case, the penalty has been correctly imposed on him.

6. I have heard the learned counsel for the parties and perused the record carefully.

7. It is not in dispute that in the present case, it was found that during the course of trial Baljinder Singh, accused had been detained in Central Jail, Ludhiana in some other case and he was directed to be produced before the Trial Court by issuing production warrants and in compliance of the warrants, he was brought from Central Jail, Ludhiana on 27.09.2000 and was produced before the Trial Court. Apart from that, Baljinder Singh, accused was later on tried also and vide the judgment dated 19.04.2001, he was convicted under Section 15 of the NDPS Act and ordered to be sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1,00,000/-, along with default stipulation.

8. Apart from that, no doubt, Baljinder Singh did not appear before the Trial Court on 24.09.1999, but it has been found that he was confined in Central Jail, Ludhiana in some other case. Consequently, production warrants were issued by the Trial Court and in compliance of said warrants, he was brought from Central Jail, Ludhiana on 27.09.2000 and was produced before the Trial Court. Thus, it was impossible for the appellant to produce the accused before the Trial Court on specific date i.e. 24.09.1999 as he was confined in some other case and this fact was not in the knowledge of the appellant as well

as the Trial Court. Consequently, this Court finds sufficient force in the submissions made by learned counsel for the appellant that the appellant was not in a position to produce Baljinder Singh, accused and no fault can be attributed to the appellant. Moreover, from the record it is apparent that no show cause notice was ever issued by the Trial Court in terms of Section 446 of Cr. P.C. nor the Trial Court had recorded the grounds of proof of forfeiture of the bond in the present case. Thus, it is also evident that the mandatory provision, as laid down by Section 446 of the Cr. P.C had not been followed and the impugned order is legally unsustainable.

9. Hence, in view of the above discussion, the present appeal is allowed and the order dated 13.11.1999 passed by the Court of Additional Sessions Judge, Hoshiarpur is hereby ordered to be set aside.

10. Pending application(s), if any, stand(s), disposed off, accordingly.

08.05.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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