

**CRA-S-1739-SB-2003****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-S-1739-SB-2003****Judgment reserved on: 15.05.2024****Pronounced on: 16.05.2024****Raj Pal and another****...Appellants****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. Diksha Sharma, Advocate
for the appellants. (Amicus Curiae)

Ms. Geeta Sharma, DAG Haryana

**********HARPREET SINGH BRAR, J.**

1. This appeal has been filed by the appellants against order dated 21.08.2003, passed by the learned Additional Sessions Judge, Bhiwani, whereby proceedings under Section 446 of Cr.P.C. were initiated and a penalty of Rs. 20,000/- each out of the personal bond and surety bond of Rs. 30,000/- each was imposed on them.

2. Learned counsel for the appellants argued that appellant No.1 was granted the concession of bail by this Court on 31.01.2002, in the case stemming from FIR, bearing number 176, dated 21.05.2001 under Sections 147, 148, 323, 302 and 325 of IPC, registered at Police Station City, Bhiwani. In consequence of the order of the bail, appellant No.1 furnished bail bonds and surety bond to the tune of Rs. 30,000/- each on 02.02.2002 and the said surety bond was given by appellant No.2. The appellant No.1-accused continued to appear before the learned trial Court after his release on bail.

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However, in month of June in 2003, appellant No.1 suddenly fell ill and suffered from a serious bout of infection, diarrhea and vomiting. Resultantly, he was admitted to PGIMS, Rohtak on 11.06.2003 and 13.06.2003. The learned counsel placed on record copies of the out-patient cards of PGIMS, Rohtak (Annexure P-2). Learned counsel further submitted that the trial dates were fixed for 12.06.2003 and 14.06.2003 and the non-appearance of appellant No.1 on the aforesaid dates was not deliberate but rather due to his ailment and circumstances beyond his control. Moreover, in spite of filing of copies of medical slips, alongwith applications for exemption by appellant No.1 on the two dates, the learned trial Court dismissed the same and the bail of appellant No.1 was cancelled vide order dated 14.06.2003. Subsequently, the learned trial Court issued notice under Section 446 Cr.P.C. to appellant No.2, while no notice was issued to appellant No.1 and a penalty to the tune of Rs. 20,000/- each was imposed on the appellants.

3. Per contra, learned State counsel averred that the medical slips adduced by appellant No.1 cannot be relied upon since their manipulation cannot be ruled out. As per the statements of two of the prosecution witnesses, namely Surender and Amar Singh, on 11.06.2003 at around 10:00 am, appellant No.1 was present in the village and was in fact herding his cattle to a pond. Additionally, as per Amar Singh, Surender and his nephew Ved Prakash, who is the son of appellant No.2, they witnessed appellant No.1 sitting in Central Park which is near the District Courts, on 12.06.2003 at about 12:30 pm. Lastly, it was contended that the original medical prescription issued from PGIMS, Rohtak in the name of appellant No.1 does

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not suggest that he was admitted as an indoor patient or his that he was discharged at any time thereafter.

4. Heard learned counsel for both the parties and perused the records of the case.

5. A similar issue was decided by the Hon'ble Supreme Court in ***'Mohammed Kunju v. State of Karnataka' 1999 (4) RCR (Criminal) 726*** and this Court in ***'Bhagat Singh v. State of Haryana' 2018 (2) RCR (Criminal) 337***, ***'Mohinder Singh v. The State of Punjab' 2008 (22) RCR (Criminal) 704***, ***'Angrej Singh v. State of Punjab' 2010 (4) RCR (Criminal) 580*** and ***'Gopal Kaur v. State of Punjab' 2011 (6) RCR (Criminal) 1394***, wherein, the penalty imposed under Section 446 of Cr.P.C. was reduced to 1/4th of the amount of surety bonds by holding that the said bonds were on the higher side.

6. It transpires that appellant No.1 was suffering from an illness. This fact is corroborated by the out-patient cards of PGIMS Rohtak as well as the medical slip of 'Shri Ram Hospital', Mal Godam Road, Rohtak. Further, from the date of the grant of bail i.e. 31.01.2002 till 12.06.2003, appellant No. 1 was regularly appearing before the learned trial Court. On the days appellant No.1 could not appear before the learned trial Court, applications seeking exemption were duly moved on his behalf. Justice and compassion are mutually inclusive, while accountability and fairness are integral facets of justice, the idea of just justice can only be realised through compassion.

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7. Keeping in view the facts and circumstances of the case, this Court is of the opinion that the interest of justice would be served in allowing the present appeal.

8. The amount of penalty of Rs. 20,000/- imposed on each of the appellants is reduced to Rs. 5,000/- each. If the said amount of Rs. 5,000/- has not been deposited or recovered from the appellants so far, they are directed to deposit the same within a period of 03 months from today, failing which, this appeal would automatically stand dismissed without any further orders.

9. Disposed of, in the aforesaid terms.

(HARPREET SINGH BRAR)
JUDGE

16.05.2024*Ajay Goswami*

Whether speaking/reasoned: -

Yes/No

Whether reportable: -

Yes/No