

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 07.02.2024

(1) CWP-13049-2021

ABHEY SINGH AND ANOTHERPetitioners

VERSUS

STATE OF HARYANA AND ANOTHERRespondents

(2) CWP-5366-2021 (O&M)

ATMA RAM AND ANOTHERPetitionerss

VERSUS

STATE OF HARYANA AND ANOTHERRespondents

(3) CWP-5065-2022

PINKI AND ANOTHERPetitionerss

VERSIS

STATE OF HARYANA AND ANOTHERRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vikas Bishnoi, Advocate
for the petitioners in CWP-5366-2021.

Mr. Bhanu Udai, Advocate for
Mr. Vikas Gulia, Advocate
for the petitioners in CWP-5065-2022.

None for the petitioners in CWP-13049-2021.

Mr. Narinder Singh Behgal, Asstt. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Since common question of law arises in these three writ petitions, the same are being decided by common order.
2. For the facility of reference, the facts are extracted from *CWP-13049-2021* titled as *“Abhey Singh and another versus State of Haryana and another”*.
3. Challenge in the said writ petition is to the order dated 15.12.2020 passed by the District Magistrate, Rewari whereby the surety submitted by the petitioner has been ordered to be forfeited to the sum of Rs. 2 lakhs to the Government.
4. It has been averred in the petition that a surety bond for the sum of Rs. 2 lakhs only was furnished for parole in respect of convict Bhim Singh on 03.03.2020 and for securing his release, on parole for a period of 06 weeks. The said parole had later on been extended upto 16.11.2020 by the order of the learned Commissioner, Gurugram, due to the contagion of Covid. However, during the extended period of parole, convict Bhim Singh son of Poliya Ram resident of village Kasola, District Rewari was arrested in another FIR No. 328 dated 15.10.2020 registered under Sections 379-B, 323, 341, 506 read with Section 34 of the Indian Penal Code, 1860 at Police Station Kasola, District Rewari and was admitted again into Jail on 03.11.2020.
5. Consequently, the convict could not surrender on 16.11.2020. Notwithstanding that the convict Bhim Singh was already in police custody, a

Show Cause Notice dated 26.11.2020 was served upon the petitioners who served as a surety to the convict.

6. A detailed reply was submitted by the petitioners to the Show Cause Notice dated 26.11.2020 apprising that the said convict has been arrested and was confined in Gurugram Jail on 03.11.2020 as per the orders of Judicial Magistrate, First Class, Rewari. However, notwithstanding the said reply and the explanation furnished, the respondent passed the impugned order dated 15.12.2020 directing forfeiture of the surety of Rs. 2 lakhs each to be recovered from the petitioners. Aggrieved thereof the present writ petition has been filed.

7. Reply by way of affidavit of Sanjeev Kumar, City Magistrate, Rewari has been filed in which the above said factual aspects are not disputed. It is, however, submitted that the petitioners had furnished surety bond to the tune of Rs. 2 lakhs each on 03.03.2020, in compliance of the conditions of parole, and it was on the surety furnished by the petitioners that the convict Bhim Singh was released. Since the convict failed to surrender after the period of parole, the order was rightly passed.

8. It was submitted in the reply that the said convict had been arrested in FIR No. 328 dated 15.10.2020 on 03.11.2020. The convict thus failed to maintain good behavior and peace and having violated the provisions in terms and conditions of Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, the surety amount was liable to forfeited.

9. Learned counsel appearing on behalf of the petitioners contends that the respondents have directed forfeiture of the surety furnished by the petitioners on the failure of convict to surrender in time. The petitioners had furnished the surety of good behavior only for a period of 42 days and subsequent extension was by the Government. He contends that the issue as

regards entitlement of the State Government to forfeit the surety has already been dealt by this Court in its judgment dated 06.12.2022 passed in ***CWP-25735-2019*** titled as ***“Deepak versus State of Haryana and others”*** as per which the State has not framed any rules and vested any power in the respondent-authorities to forfeit the surety under Section 10(2)(C) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

10. Counsel for the respondent-State however, reiterates his argument as per the written statement. He, however, is not in a position to controvert the judgment of this Court as regards the entitlement of the State Government to direct forfeiture of the surety bond furnished by surety for seeking parole of convict.

11. I have heard learned counsels appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

12. The factual aspect which is undisputed is that the petitioners had furnished a surety bond of Rs. 2 lakh each for 42 day parole of convict Bhim Singh and that the said period of parole was later extended by the learned Commissioner, Gurugram on account of the ongoing Covid scenario till 16.11.2020. However, the convict had committed another offence and was taken in custody on 03.11.2020 and was confined to jail by orders of the Judicial Magistrate. The failure of the convict to surrender was a result of the said arrest. It is undisputed that the above said failure was not on account of any lapse attributable to the petitioners. The convict was already in custody of the State and as such, it cannot be said that there was a lapse on the part of the petitioners in the convict not surrendering in concerned jail.

13. Insofar as the second contention of the counsel for the State that there was a breach of peace and good behavior required to be maintained by the convict during the parole period and that he having indulge in another offence during the continuance of a parole, the surety would be deemed to be in breach of the conditions prescribed therein and the bond is liable to forfeited. The conditions of the surety bond furnished by the petitioners are extracted as under:

“1. I deponent grant bond of Rs.2,00,000 for the convict and by being a surety, I agree to abide by the conditions mentioned in the bond.

2. As soon as the convict is released on temporary leave from the jail Gurugram will go straight to the village Kasola. He will not go out without permission of the District Magistrate.

3. As soon as the 42 days leave is over, the convict will appear in concerned jail to serve the sentence.

4. I give this bail bond of Rs.2,00,000.

5. If surety becomes insolvent even during the leave, the government can take another surety if it wants.

6. The convict shall keep peace and maintain good behavior during the period of 42 days on temporary release.

7. Bond of Rs. 200000/- will be forfeited if anything goes against above conditions. I personally will be responsible for depositing the bond amount of Rs. 200000.”

14. It is evident from a perusal of the above said conditions that the surety furnished by the petitioners is that the convict shall appear after a period of 42 days and that the undertaking of the convict to maintain peace and good behavior was given for a period of 42 days. The objectionable behaviour was after the expiry of the above period. The respondent-State cannot travel beyond the terms and conditions sworn and affidavit by the petitioners and bind them

for any later acts. Any extension of parole by the State, on its own action, cannot automatically be deemed to be an extension of the undertaking given by the petitioners.

15. The State having failed to secure any additional undertaking or affidavit from the petitioners with regard to maintenance of peace and good behaviour from the petitioners for the extended period, it cannot extend the obligation upon the petitioner for an act which is attributable unilaterally or solely to the respondent-State itself.

16. Hence, even on that account, the respondent-State would not be justified in directing forfeiture of the surety merely on account of the convict not maintaining peace and good behaviour during the period of temporary release more-so when the misconduct took place on 03.11.2020 and was much after the expiry of 42 days undertaking given by the petitioners.

17. Insofar as the entitlement of the respondent-State to liquidate a surety on account of a lapse under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is concerned, the said issue and the power of the authorities as per the rules has already been discussed by this Court in its judgment of **Deepak (supra)**. The relevant extract thereof reads thus:-

12. It is also evident that even though the provisions of Section 10(2)(c) of the Act empowers the State Government to frame Rules relating to the forfeiture of the amount of bonds, however, the Rules of 2007 notified by the State do not provide for the forfeiture of the amount of bond as stipulated under Section 10(2)(c) of the Act.

13. Rule 10 prescribes the consequences of overstay under Section 10(2)(d) of the Act, 1988 while Rule 11 deals with the bonds in reference to Section 10(2)(a) and Section 10(2)(d) pertaining to the execution of the bond as well as surety; the

amount as well as form in which such bonds shall be furnished. The said Rule also does not deal with the issue of forfeiture of the bonds in case of breach of any of its terms. Hence, the Act of 1988 and Rules of 2007 have not authorized or approved forfeiture of bonds or security.

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18. The order passed by the District Magistrate does not mention about the powers invoked by him. The release of the convict on probation was in exercise of the powers under the Act of 1988 and the Rules framed thereunder. The legislature was undoubtedly conscious of the aspect of forfeiture of the bonds/sureties under Section 10(2)(c) thereof and yet chose to not provide for forfeiture while notifying the Rules of 2007. It however did stipulate the consequences of overstay and punishment thereof.

19. The Act of 1988 is a beneficial provision which extends certain benefits to a prisoner on his showing good conduct. At the same time, the Criminal Procedure Code is not to be viewed as a residuary statute to apply even to areas that stand occupied by a special statute. The scheme of Cr.P.C. shows that it applies to "Inquiries", "Investigation" and "Trials" and various ancillary aspects that relate to the above. It does not stipulate "Parole" or "Furlough" which are provided for under a separate statute.

20. The legislature seemingly has chosen not to provide for forfeiture of surety or bonds and has prescribed Penalty/Punishment to the convict for overstay. The legislature stopped at that and preferred not to provide for forfeiture of bonds. The object, it seems, is to inflict punishment only on the violator and not the surety.

18. As the counsel for the respondent-State does not dispute the above said judgment on the issue, hence, even on said account, the act of the

respondents would be bad for want of authority and jurisdiction. The order has been passed in a similar manner.

19. In light of the above, the **present writ petition is allowed** and the order dated 15.12.2020 passed by the District Magistrate, Rewari directing forfeiture of the surety of Rs. 2 lakhs is set aside.

20. Insofar as **CWP-5065-2022 and CWP-5366-2021** are concerned, the parole had however not been extended by the Learned Commissioner under any order. Nonetheless, the ratio of the judgment in the matter of **Deepak (supra)**. would still be applicable and the fact remains uncontroverted that the convict was already in police custody as on the said date.

21. Consequently, **the said writ petitions are also allowed**. The impugned orders dated 20.10.2020 and 25.11.2021 respectively passed by the District Magistrate, Rewari directing forfeiture of the surety of Rs. 2 lakhs is set aside.

22. All the pending miscellaneous application(s), if any, are also disposed of.

23. A photocopy of this order be placed on the file of connected cases.

FEBRUARY 07, 2024
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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