

2024:PHHC:085849



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

124

**CRM-M No.32157 of 2024 (O&M)
Date of decision: 10.07.2024**

Shamsher and another **...Petitioners**

Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Kawalpreet Singh Virk, Advocate
for the petitioners.
Mr.Arjun Lakhanpal, Addl. A.G., Haryana.1

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 482 read with Section 444 of Code of Criminal Procedure for quashing of order dated 12.06.2024 (Annexure P-6) passed by Ld. Chief Judicial Magistrate, Jind in case FIR no. 984 dated 23.10.2016 under section 307, 34 IPC and Section 25 Arms Act at registered at P.S. City Jind, Jind whereby the applications filed by the petitioners for discharging them as sureties of Respondent no.2 have been dismissed.
2. Brief facts relevant for the disposal of the case are that an FIR No. 984 dated 23.10.2016 was registered against the respondent No. 2 under Sections 307, 34 of the Indian Penal Code. Thereafter he was convicted by the learned trial Court vide judgment dated 23.09.2019 and preferred an appeal before the High Court whereby the order of his sentence was suspended by a Division Bench of this court, vide order dated 22.07.2021 passed in



CRM-M-32157-2024 (O&M)

-2-

CRM-17615 of 2021 in CRA-D-961-2019, subject to his furnishing personal bonds in the sum of Rs. 5 Lakhs with two sureties in the like amount. On request of father of respondent No. 2, who was well known to the petitioners and in good faith, the petitioners stood sureties for respondent No. 2 and furnished surety bonds to the tune of Rs. 5 Lakhs each. They had also given details of the agricultural land owned by them by submitting jamabandi and a *rapat roznamcha* entry bearing No. 23 had also been incorporated in the record of revenue authorities on 18.09.2021 qua their standing surety to the extent of Rs. 5 Lakhs each.

3. It is submitted by learned counsel for the petitioners that after securing the order of suspension of sentence, awarded to him in case bearing FIR No. 984, respondent No. 2 was subsequently involved in another case arising out of FIR No. 315 dated 22.11.2021, under Sections 389, 392, 365, 506 and 34 of IPC and Section 25 of the Arms Act. He has been arrested and is confined in District Jail, Kaithal. It is submitted that since both the petitioners, due to their family situations, want to sell the land, documents of which were furnished by them while standing surety for respondent No. 2, therefore, they tried to alienate the same. However, since entries in the revenue record have been made qua their land being constituted as surety, therefore, they have not been able to sell the same. Hence, they moved applications (Annexures P-1 & P-3) before the learned Chief Judicial Magistrate, Jind for discharging the surety bonds so furnished by them respectively in favour of respondent No. 2. However, by passing the impugned order, the said applications have been dismissed.



4. Learned counsel for the petitioners has argued that once the petitioners sought their discharge as sureties of respondent No. 2, then it was incumbent upon the Magistrate to do so in compliance of the provisions of Section 444 of Cr.P.C., which are mandatory in nature but in a casual, mechanical and arbitrary manner and by proceeding against the provisions of law, the impugned order has been passed rejecting the prayer of the petitioners. While relying upon the judgment of this Court rendered in ***Ritesh vs. State of Haryana, CRM-M-6352-2022***, it is urged by learned counsel for the petitioners that the petition deserves to be allowed and the impugned order is liable to be set aside.

5. Mr. Arjun Lakhanpal, Addl. A.G., Haryana, who has advance notice, has appeared on behalf of respondent-State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that the perusal of the impugned order would show that in fact, section 444 of Cr.P.C., 1973 as is apparent, has not even been brought to the notice of the learned Chief Judicial Magistrate, Jind. More so, once the petitioners stood sureties for respondent No. 2 and while furnishing bonds gave copies of *jamabandis* of land owned by them by way of security, therefore, they could not be discharged subsequently merely because of the reason that respondent No. 2 had been involved and arrested in some other case. As such, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioners as well as learned State counsel at considerable and have also gone through the record carefully.



7. It is not in dispute that respondent No. 2 had been held guilty and convicted for commission of offence punishable under Section 307 read with Section 34 of IPC in case arising out of FIR No. 984 dated 23.10.2016, registered under Sections 307, 34 of IPC and Section 25 of the Arms Act at Police Station City Jind, District Jind. They preferred an appeal against the order of conviction and had also prayed for suspending the sentence awarded to them by the trial Court. It has also come on record that their sentence was suspended by this Court, vide order dated 22.07.2021, subject to his furnishing personal bonds and two sureties to the tune of Rs. 5 Lakhs each and the present petitioners had furnished such bonds before the Court of Magistrate and stood surety for respondent No.2. A perusal of the impugned order, as passed by the Chief Judicial Magistrate, Jind, reveals that on filing of applications by the petitioners, he had secured presence of respondent No. 2 in the Court, who recorded his statement that he was not in a position to arrange for other sureties and simply by observing that since respondent No. 2 could not arrange his sureties and as his sentence was suspended and bonds before him were furnished in compliance with the aforesaid order passed by this Court in **CRA-D-961-2019**, therefore, the applications did not deserve to be allowed.

8. Before delving into the question as to the legality of the impugned order, this Court would like to refer to Section 444 of Cr.P.C., which is relevant for the purpose of deciding the present petition and is reproduced below:

"444. Discharge of sureties.

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a



Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail."

9. On a perusal of this section, it is revealed that it is open to a surety to apply to the Magistrate to discharge the surety bond furnished before him/her either wholly or partly and what is required to be done by the Magistrate is to issue warrants of arrest directing the person so released to be brought before him and on appearance of such person, the Magistrate is further required to direct the bonds to be discharged while calling upon the accused to find other sufficient sureties and in case of his failure to do so, to commit him to jail. However, in the instant case, though the Magistrate sought appearance of respondent No.2 by issuance of production warrants after moving applications by the petitioners to discharge them from the obligation of being sureties to respondent No. 2, however, when respondent No. 2 recorded a statement that he was unable to find any other surety, then instead of committing him to jail on account of his failure to furnish fresh surety bonds for the purpose of maintaining the order of suspension of sentence, the Magistrate rejected the prayer made by the petitioners by making observations as discussed above. The question that arises for consideration before this Court is as to whether the impugned order is sustainable in the eyes of law? In the



considered opinion of this Court, the answer to this question should be in the negative as the provisions of Section 444 of Cr.P.C. are mandatory in nature and cast a duty upon the Magistrate to discharge the bonds of the sureties on applications being moved before him after giving opportunity to the person in whose favour such bonds were furnished to find some other sufficient sureties. Merely because of the fact that the sentence of respondent No. 2 was suspended by this Court, the petitioners could not be deprived of their right to seek discharge of their bonds as sureties. In this regard, this Court places reliance upon the authority cited as *Raghubir Singh vs. State of Bihar : 1986 (4) SCC 481*, wherein it was observed as under:

“20. The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the proviso to Section 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of Chapter 33 of the Code for the purposes of that chapter. That is provided by the proviso to Section 167(2) itself. This means, first, the provisions relating to bonds and sureties are attracted. Section 441 provides for the execution of bonds, with or without sureties, by persons ordered to be released on bail. One of the provisions relating to bonds is Section 445 which enables the Court to accept the deposit of a sum of money in lieu of execution of a bond by the person required to execute it with or without sureties. If the bond is executed (or the deposit of cash is accepted), the Court admitting an accused person to bail is required by Section 442(1) to issue an order of release to the officer in charge of the jail in which such accused person is incarcerated. Sections 441 and 442, to borrow the language of the Civil



Procedure Code, are in the nature of provisions for the execution of orders for the release on bail of accused persons. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the Court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightway. Orders for release on bail are effective until an order is made under Section 437(5) or Section 439(2). These two provisions enable the Magistrate who has released an accused on bail or the Court of Session or the High Court to direct the arrest of the person released on bail and to commit him to custody. The two provisions deal with what is known in ordinary parlance as cancellation of bail. Since release on bail under the proviso to Section 167(2) is deemed to be released on bail under the provisions of Chapter XXXIII, an order for release under the proviso to Section 167(2) is also subject to the provisions of Sections 437(5) and 439(2) and may be extinguished by an order under either of these provisions. It may happen that a person who has been accepted as a surety may later desire not to continue as a surety. Section 444 enables such a person, at any time, to apply to a Magistrate to discharge a bond either wholly or so far as it relates to the surety. On such an application being made, the Magistrate is required to issue a warrant of arrest directing the person released on bail to be brought before him. On the appearance of such person or on his



voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as it relates to the surety, and shall call upon such person to find other sufficient surety and if he fails to do so, he may commit him to jail. (Section 444). On the discharge of the bond, the responsibility of the surety ceases and the accused person is put back in the position where he was immediately before the execution of the bond. The order for release on bail is not extinguished and is not to be defeated by the discharge of the surety and the inability of the accused to straightway produce a fresh surety. The accused person may yet take advantage of the order for release on bail by producing a fresh, acceptable surety.”

10. Reliance can also be placed upon the authorities rendered in *Ritesh*’s case (supra) as *Pradeep Kumar Das vs. State of Odisha*, CrI. Appeal No. 286 of 2003, decided on 13.07.2023, wherein similar observations have been made.

11. In view of the discussion as made above, the present petition is allowed and the impugned order dated 12.06.2024 (*Annexure P-6*), passed by the learned Chief Judicial Magistrate, Jind is set aside. The sureties furnished by the petitioners shall be deemed to be discharged.

12. Let copies of this order be sent to learned Chief Judicial Magistrate, Jind as well as Superintendent, District Jail, Kaithal for communicating the same to respondent No. 2-Aman.

10.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes