

CRM-M-39233-2024

1

128

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39233-2024
Decided on : 13.08.2024

Phoolwati and another
... Petitioners

Versus

State of Haryana and others
... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. Krishan Singh, Advocate
for the petitioners

Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 23.07.2021 (Annexure P-4) passed by respondent No.3 i.e. District Magistrate, Sonipat whereby the petitioners have been directed to deposit the surety amount of Rs.2,00,000/- each mentioned in the surety bonds executed by the petitioners for getting the convict Ombir @ Omi son of Ram Kishan, resident of Village Silothi, Police Station Sadar Bahadurgarh, District Jhajjar released on parole, who was undergoing life imprisonment in FIR No.76 dated 12.06.2011 registered under Sections 148, 149, 302 IPC at Police Station Chayasa, District Faridabad.

2. The brief facts of the present case are that the convict Ombir @ Omi son of Ram Kishan, resident of Village Silothi, Police Station Sadar Bahadurgarh, District Jhajjar, was convicted for life imprisonment by learned Additional

**CRM-M-39233-2024****2**

Sessions Judge, Faridabad in FIR No.76 dated 12.06.2011 under Sections 148, 149, 302 of IPC, registered at Police Station Chayasa, District Faridabad. The above said convict was confined in District Jail Faridabad. In the month of March, 2020, there was pandemic COVID-19 and the Government of Haryana has decided to release the convicts on parole so that the corona pandemic may not be spread in jail. The convict Ombir @ Omi and other convicts who were in jail were released on parole by the Government. The convict Ombir @ Omi was also release on six weeks special parole on 09.04.2020 in compliance of the order Memo No.404-06 dated 28.03.2020 issued by the Commissioner, Faridabad Division, Faridabad.

3. The convict Ombir @ Omi son of Ram Kishan, was directed to produce two sureties of the amount of Rs. 2,00,000/- each for his release on parole leave. The petitioners stood surety of the above said convict and furnished the surety bonds for a sum of Rs.2,00,000/- each, for the release of convict Ombir @ Omi on six weeks special parole leave. Ultimately, the convict was released on six weeks special parole leave by Superintendent, District Jail, Faridabad on 09.04.2020 and he was directed to surrender in the jail on 25.05.2020, but due to corona pandemic the parole period of the convict Ombir @ Omi was extended from time to time in view of the instructions issued by High Power Committee and finally the convict was directed to surrender himself before the Jail Authority on 14.04.2021.

4. During the period of parole leave, the convict Ombir@ Omi was implicated in FIR No.556/2020 under Sections 302, 120-B IPC registered at Police Station Bisrakh, District Gautam Budh Nagar (Uttar Pardesh) and he was arrested by the police of Police Station Bisrakh, District Gautam Budh Nagar on

**CRM-M-39233-2024****3**

04.03.2021 and he was sent to District Jail Gautam Budh Nagar. Thereafter, the petitioner was released on bail in said FIR. After releasing from District Jail, Gautam Budh Nagar, Uttar Pradesh, the convict Ombir was again lodged in District Jail, Faridabad and presently convict Ombir is on bail as his sentence has been suspended by this Court vide its order dated 29.09.2023.

5. Learned counsel for the petitioners submits that petitioner No.1 is the mother and petitioner No.2 is the sister of the convict Ombir @ Omi. Both of them stood surety of convict Ombir at the time of his release on special parole. The convict Ombir was falsely implicated in the FIR No.556/2020 registered at Police Station Bisraakh, District Gautam Budh Nagar and he was arrested in relation to this FIR, thus, he could not surrender himself before the concerned Jail Authority and situations were out of his control. Now the petitioners have received a letter from District Magistrate, Jhajjar stating that the sureties furnished by the petitioners have been forfeited and they were directed to deposit the amount of surety i.e. Rs.2,00,000/- each and the petitioners received summons dated 09.07.2024 to appear before concerned Tehsildar on 28.08.2024 and deposit Rs.2,00,000/- each. He further submits after receiving the above said summons dated 09.07.2024, the petitioners enquired from the office of District Magistrate, Jhajjar about the recovery of amount of Rs.2,00,000/- each, then they came to know that the surety bonds which were furnished by the petitioners at the time of release of the convict Ombir on special parole have been forfeited to the State and the Tehsildar, Bahadurgarh has been directed to recover the amount of Rs.2,00,000/- each from the petitioners.

6. Learned counsel further submits that the impugned order dated 23.07.2021 passed by respondent No.3 District Magistrate, Jhajjar is illegal,



CRM-M-39233-2024

4

erroneous and liable to be set aside as the same has been passed by the respondent No.3 in violation of principles of natural justice as no opportunity of being heard was granted to the petitioners before passing the impugned orders. The petitioners have stood sureties of convict Ombir @ Omi in good faith and convict Ombir had not violated the term and conditions of the parole leave intentionally rather he was falsely implicated in FIR No.556/2020 and he was arrested by the police of Police Station Bisrakh on 04.03.2021 and that is why he could not surrender himself before the concerned Jail Authority on 14.04.2021 and immediately, after releasing from District Jail Gautam Budh Nagar, the convict Ombir was lodged in District Jail Faridabad. In this way, the petitioners have not facilitated the convict Ombir to absent himself from jail. Even the convict Ombir has already been released on bail as his sentence has been suspended by this Court vide order dated 29.09.2023 passed in CRM-37833-2023 in CRA-D-723-DB-2013 titled as '*Ombir and others Vs. State of Haryana*'.

7. Learned counsel for the petitioners further submits that the petitioners are very poor household ladies and they are not in position to pay the above said amount. They had given surety of the above said convict in a good faith being mother and sister of the convict. The petitioners are poor persons and they are not in position to pay such a huge amount of surety.

8. Reliance is placed upon judgments passed in ***Malook Singh Versus State of Punjab, CRA-S-1027-2022, decided on 04.05.2023*** and ***Akhilesh Kumar & another versus State of Haryana, CRM-M-28978-2011, decided on 10.07.2012.***

9. Per contra, learned State counsel contends that the petitioners were very well aware about the fact that they were executing surety bonds for the



CRM-M-39233-2024

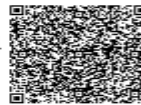
5

convict and the amount of Rs.2,00,000/- as surety was in their knowledge. Once they were aware of the consequences of their action, no illegality could be found in the order of the District Magistrate and, therefore, no circumstances existed warranting the interference of this Court with the impugned order. He, however, concedes that Ombir @ Omi has already been released on bail as his sentence has been suspended by this Court vide order dated 29.09.2023 passed in CRM-37833-2023 in CRA-D-723-DB-2013 titled as '*Ombir and others Vs. State of Haryana*'.

10. I have heard the rival submissions made by learned counsel for the parties.

11. This Court in ***Malook Singh Versus State of Punjab, CRA-S-1027-2022, decided on 04.05.2023***, held as under:-

“6. Admittedly, the appellant stood as surety for Gurpal Singh @ Bhalla in FIR No.91 dated 16.04.2019 under Sections 15, 18, 29 of NDPS Act registered at Police Station Sirhind, District Fatehgarh Sahib. After appearing for sometime Gurpal Singh @ Bhalla absconded from the Trial consequent to which the impugned order came to be passed. There is absolutely no evidence to suggest that the appellant facilitated his escape or connived with him (accused-Gurpal Singh @ Bhalla) so as to enable him to disassociate himself from the Trial. On the contrary, subsequently on the efforts of the appellant, Gurpal Singh @ Bhalla surrendered before the concerned Court. In the case of Mohd. Kunju Vs. State of Karnataka, 1999(4) RCR (Criminal) 726 (SC), the accused had fled from India and had gone to a foreign country. The Hon’ble Apex Court held that there was nothing to suggest that the surety had any remote scent, that the accused was preparing to escape from India, nor was there any evidence to suggest that the surety had connived with the accused, who jumped the bail. Under these circumstances, the Apex Court reduced the penalty to a sum of Rs.5,000/- from the amount of Rs.50,000/- which was imposed on the surety by the Trial Court. In



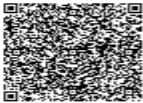
Madhu Limaye Vs. Metropolitan Magistrate, 1984, CRM-M-1378-2017 -5- (Supplementary) Supreme Court cases, 699, a three judge Bench of the Apex Court, reduced the penalty to a nominal sum of Rs.100/- in a case, in which the accused, some foreign nationals, escaped from India and were never arrested. In the case of Harbhajan Singh Vs. State of Punjab 2008(4) RCR (Criminal) 410 the penalty imposed of Rs.40,000/- was reduced to Rs.20,000/-.

7. *In view of the facts and circumstances as enumerated above and also the observations made in the aforementioned judgments, the reduction in the amount of penalty is warranted in the instant case. Therefore, the appeal is partially accepted. The order dated 16.12.2021 is modified to the extent that the penalty of Rs.50,000/- imposed upon the appellant-surety is reduced to Rs.10,000/-. The Chief Judicial Magistrate, Fatehgarh Sahib is directed to ensure compliance of this order. 8. The appeal is partially accepted in the aforesaid terms.”*

(emphasis supplied)

12. In ***Akhilesh Kumar & another versus State of Haryana, CRM-M-28978-2011, decided on 10.07.2012***, it was held as under:-

“Since the petitioners have proposed not to challenge the impugned order on merits but have confined their arguments with regard to the quantum of the amount forfeited, therefore, the impugned order dated 24.01.2011 is upheld so far as forfeiture of the surety bonds furnished by the petitioners are concerned. However, keeping in view the facts that the convict who was released on parole has now surrendered and undergoing the remaining sentence; the petitioners not being the professional sureties and the fact that the penalty imposed upon each of the petitioner is on higher side, this court is of the considered opinion that the petitioners deserve to be extended some concession. Accordingly, the order dated 24.01.2011 passed by learned District Magistrate, Rewari, is hereby modified to the extent that each of the petitioner would now deposit Rs. 50,000/- (i.e. Rs. 50,000/- + Rs.



CRM-M-39233-2024

7

50,000/- = Rs. 1,00,000/-) within one month of passing of this order.”

13. In the instant case, admittedly, the convict has already been released on bail as his sentence has been suspended by this Court vide order dated 29.09.2023 passed in CRM-37833-2023 in CRA-D-723-DB-2013 titled as '*Ombir and others Vs. State of Haryana*'. The petitioners are not stated to be professional sureties. There is nothing to suggest that they had facilitated the escape of the convict or were aware of the likelihood of his absconding. Therefore, a lenient view can be taken in the facts and circumstances of this case.

14. In view of the above, the impugned order dated 23.07.2021 (Annexure P-4) passed by respondent No.3 i.e. District Magistrate, Sonipat is hereby modified to the extent that petitioner No.1 and petitioner No.2 would deposit a sum of Rs.25000/- each within one month of the passing of this order.

15. The Chief Judicial Magistrate, Sonipat is directed to ensure the compliance of this order.

(KIRTI SINGH)
JUDGE

August 13, 2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No