

**CRA-S-3135-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.109****Case No. : CRA-S-3135-2024****Decided On : September 17, 2024**

Sunil Mann

.... Appellant

vs.

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Anikit Singh Chauhan, Advocate
for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

* * *

GURBIR SINGH, J. :

1. The present appeal has been filed against the order dated 03.09.2024, passed by learned Additional Sessions Judge, Karnal, thereby ordering attachment of the property of the appellant and further, warrant of arrest has been against him for 12.11.2024.

2. Learned counsel for the appellant has submitted that the appellant stood surety for release of accused Sahab Singh. He absented from the Court. A Show Cause Notice dated 15.02.2024 was issued to the appellant being surety, wherein amount of Rs.1,20,000/- was imposed as penalty. The appellant is not having any personal relation with the accused Sahab Singh, whose brother-in-law is a close friend of the appellant. Since the accused could not be arrested, proclamation against him has already been issued by the Court concerned.



3. It has been further contended that the appellant appeared in person before the Court on 19.04.2024 and made statement that he be given some time to produce the accused. However, the appellant could not find the accused. It has been argued that the appellant only sought time to produce the accused but did not admit that otherwise, he would deposit the surety amount. The said order is under some miscommunication. There is no connivance of the appellant with the accused. The order passed against the appellant is very harsh. Reliance has been placed on a judgment passed in the case of **Raghubir and another vs. State of Haryana and another** reported as **2022(1) RCR (CrL.) 251**.

4. Pursuant to advance notice, learned State counsel has put in appearance to assist the Court and has submitted that the pleas sought to be raised before this Court, are required to be pleaded before the learned Trial Court. He has further reiterated that the appellant himself prayed before the learned Trial Court to give time to produce the accused, otherwise, he would deposit the surety amount. So, the present appeal deserves dismissal.

5. I have heard the submissions of learned counsel for the appellant and the learned State counsel.

6. Admittedly, the appellant stood as surety for the accused Sahab Singh and furnished surety bonds. Notice was issued to the appellant. He appeared in the Court on 19.04.2024 and made statement that he be given some time to produce the accused, failing which he would deposit the surety amount. On that day, proclamation was issued against the accused for



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25.04.2024 in order to secure his presence on or before 31.05.2024, on which date he was declared proclaimed offender/proclaimed person.

7. On 03.09.2024, following order was passed by the Court of learned Additional Sessions Judge, Karnal :-

“Report of Tehsildar received, wherein it has been stated that there is no movable and immovable property in the name of accused Sahab Singh.

Further, concerned Tehsildar is directed to attach the property of the surety of Sahab Singh. Ahlmad of this court is directed to annex the surety bond with the copy of this order and send the same to concerned Tehsildar for its strict compliance. Concerned Tehsildar is directed to furnish his report on 12.11.2024.

Warrant of arrest against surety of accused Sahab Singh be issued for the date fixed.

Witnesses at serial No.3, 6, 7 and 9 be summoned for the date fixed.”

8. Section 446(3) of the Code of Criminal Procedure (Cr.P.C.) and Section 491(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) empower the Court to remit any portion of the penalty mentioned and to enforce payment in part only. The Hon’ble Supreme Court, while dealing with the issue of remission, in the case of **Mohammad Kunju and another vs. State of Karnataka** reported as **(1999) 8 SCC 660**, has observed as under :-

“13. Learned counsel then contended that as the bond was executed by the accused with two sureties the upper limit of the amount which the court can



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realise from both the sureties together cannot exceed the amount which the accused has stated in his bond. In other words, when the accused executed a bond for Rs. 25,000/- the sureties can be made liable to pay the said amount either jointly or severally, according to the counsel. The acceptability of the aforesaid contention depends upon the wording of the bond executed by the appellants. There was a controversy earlier as to whether the bond is a single one supported by two sureties or the bond executed by a surety is different from that of the accused. The controversy stands settled now by the decision of this Court in [Ram Lal v. State of U.P.](#) . Their Lordships, after referring to the wording contained in Form No. 42 of Schedule V of the old [CrPC](#), 1898, have held thus:

“The undertaking to be given by the surety was to secure the attendance of the accused on every day of hearing and his appearance before the Court whenever called upon. The undertaking to be given by the surety was not that he would secure the attendance and appearance of the accused in accordance with the terms of the bond executed by the accused. The undertaking of the surety to secure the attendance and presence of the accused was quite independent of the undertaking given by the accused to appear before the Court whenever called upon even if both the undertakings happened to be executed in the same document for the sake of convenience. Each undertaking being distinct could be separately enforced.”

14. We have noticed that the wording in the corresponding Form in the new Code is identical (vide



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Form No. 45 in the second Schedule to the Code) and hence the same principle must follow in the present case also. Thus forfeiture of a bond would entail the penalty against each surety for the amount which he has undertaken in the bond executed by him. Both the sureties cannot claim to share the amount by half and half as each can be made liable to pay the amount of Rs. 25,000/-.

15. Lastly, learned Counsel made a plea for remission of the penalty. No doubt Section 446(3) of the Code empowers the court to grant such remission. It is within the discretion of the court to grant remission and to decide the extent of the remission. Such a discretion must be exercised judicially and for good reasons. Learned counsel cited the decisions of this Court in [Madhu Limaye v. Metropolitan Magistrate and Ors.](#) (1984 Supple. SCC 699). A three Judge Bench of this Court considered the plea advanced by a surety who was proceeded against as the accused-some foreign nationals-escaped from India. They were students charged with offences of "trivial nature" in 16 cases altogether. This Court held that in such circumstances "the ends of justice will be met by imposing a token penalty of Rs. 100". In the present case, though the offences charged against the foreign national are not trivial they are nevertheless not very serious comparatively. The accused slipped out of the country without anybody's knowledge and thereby rendered himself beyond the reach of the appellant. The court could have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. There is no allegation that the



appellant had any remote scent that the accused was preparing to escape from India, nor that he had connived with the accused jumping out the bail.”

9. In the case in hand, the learned Trial Court has not given any reason why entire amount of bond is to be recovered and why it is not remitted. So, the order imposing penalty is very harsh and non-speaking. The Court is competent to remit portion of the amount of penalty, in terms of Section 446(3) Cr.P.C. and Section 491(3) BNSS. So, this Court is of the view that the impugned order is not sustainable in the eyes of law. The same is hereby set aside and the matter is remanded to the Court concerned to pass a fresh order, after granting opportunity of hearing to the appellant, who is free to take all the pleas including the pleas taken before this Court in the instant appeal.
10. The appellant is directed to appear before the Court of learned Additional Sessions Judge, Karnal, on 21.10.2024.
11. Pending applications, if any, shall stand disposed of along with this judgment.

September 17, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.