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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-35798-2019 in/and
CRA-S-3312-2019 (O&M)
Date of Decision: 18.04.2024

Gurpal SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON’BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Munish Raj Chaudhary, Advocate
for the applicant/appellant.

Mr. Mohit Kapoor, Sr. D.A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-35798-2019

This is an application for condonation of delay of 560 days in
filing the appeal.

For the reasons stated in application, this Court is satisfied that
the applicant/appellant has shown sufficient cause to condone delay in filing
the appeal. Application stands allowed. Delay of 560 days in filing the
appeal is condoned.

CRA-S-3312-2019 (O&M)

This is an appeal filed under Section 449 Cr.P.C. against order dated 05.03.2018 passed by Judge Special Court, Sri Muktsar Sahib.

2. Appellant stood surety for Bohar Singh and Karamjit Kaur who were booked in FIR No.28 dated 19.07.2016, registered under Sections 367, 342, 323, 506, 201 & 34 IPC, at Police Station Lakhewali.

2.1. Both the accused absented before the Trial Court on 14.11.2017 without information. Their bail was ordered to be cancelled and bail bonds and surety bonds were ordered to be forfeited to the State. They were ordered to be summoned through non-bailable warrants for 04.01.2018.

2.2. On 04.01.2018, both Bohar Singh and Karamjit Kaur surrendered before the Trial Court. They were sent to judicial custody. Both of them earned acquittal on 06.07.2018.

2.3. However, on 05.03.2018 the impugned order was passed. The Appellant was ordered to pay a penalty of Rs.50,000/- i.e. the bail amount. Warrants of recovery were ordered to be issued to the District Collector authorizing him to realize the amount as arrears of land revenue from movable or immovable or both properties of the Appellant.

3. Counsel for the Appellant while assailing the impugned order submits that since both the accused surrendered before the Trial Court on the very next day i.e. 04.01.2018, the Appellant was under impression that he has complied with the conditions of bail and thus would not be saddled with any penalty.

4. I have heard counsel for the parties and have gone through records of the case.

5. As per the settled proposition of law, in order to saddle the surety with penalty there has to be an allegation that he had any remote scent that the accused was trying to evade law or that he had connived with the accused in jumping bail. Reference can be made to law laid down by Supreme Court in the case of *Mohammed Kunju vs. State of Karnataka*, *AIR 2000 SC 6*, wherein it has been observed as under:-

“xxxx xxxx xxxx xxxx

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.

xxxx xxxx xxxx xxxx”

6. Keeping in view the facts and circumstances of the case, the present appeal is allowed. Since the accused surrendered on the very next day and there is no allegation that the Appellant was conniving with them, the impugned order dated 05.03.2018 passed by Judge Special Court, Sri Muktsar Sahib saddling the Appellant with penalty of Rs.50,000/-, is hereby ordered to be set aside.
7. Pending application(s), if any, shall also stand disposed of.

April 18, 2024

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(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No