



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

Sr. No.124

CRA-S-3716-2024

Date of decision : 18.11.2024

HAKAM SINGH

..... Appellant

VERSUS

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sanjeev Kumar Arora, Advocate, for the appellant.

Mr. Vinay Kumar, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The present appeal has been filed under Section 495 of Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 449 of Cr.P.C. for setting aside the order dated 03.10.2024 passed by the learned Sessions Judge, Moga whereby surety bonds furnished by the appellant were forfeited and amount of surety bonds i.e. Rs.75,000/- was ordered to be recovered as fine and recovery warrant to that effect was also issued along with warrant of arrest against the appellant/surety.

2. Learned counsel for the appellant submits that the appellant stood as surety for Sikandar Singh in case FIR No. 52 dated 17.04.2024 under Sections 379-B and 34 of the IPC registered at Police Station Nihal Singh Wala, District Moga. He further submits that Sikandar Singh was arrested on 21.04.2024 and granted regular bail on 30.05.2024 by the Additional Sessions Judge, Moga, upon furnishing a personal bond of Rs. 75,000/- and one surety of like amount. The appellant provided agricultural land as surety. On 09.08.2024, charges were framed, and the case was adjourned for prosecution witnesses. However, on 02.09.2024, Sikandar



Singh absented himself, resulting in the cancellation of his bail and forfeiture of the surety bonds. Non-bailable warrants were issued on 18.09.2024 and 03.10.2024, but they were not executed. On 03.10.2024, Sikandar Singh's continued absence led to the imposition of a penalty of Rs. 75,000/- on the appellant, with orders to recover the amount by selling the appellant's agricultural land. The appellant then moved an application on 07.11.2024 for Sikandar Singh's custody and for the setting aside of the penalty. As a result, appellant has himself produced the Sikandar Singh in the Court, but the penalty was not lifted.

3. Learned counsel for the appellant has submitted that at any rate, the forfeiture of the entire amount of Rs.75,000/- is very harsh and has relied upon a judgment of the Co-ordinate Bench of this Court dated 01.02.2013 passed in **CRM-M-15296-2012** titled as **Dalvir v. State of Haryana**, judgment dated 15.09.2016 passed by a Co-ordinate Bench of this Court in **CRM-M-18977- 2015** titled as **Ram Singh and another v. State of Haryana and another** and in the case of **Raghubir and another v. State of Haryana and another** reported as **2022 (1) RCR (Criminal) 251**.

4. On advance notice, learned State counsel has put in appearance and has submitted that in the present case, the appeal deserved to be dismissed as the surety bond of Rs.75,000/- was submitted by appellant and, thus, the impugned order has been legally passed.

5. This Court has heard the learned counsel for the parties and has perused the record.

6. 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 v. 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 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 State of UP 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 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(13) 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 Suppl. 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"



7. Keeping in view the above-said facts and circumstances, the impugned order is modified to the effect that instead of Rs.75,000/- to be forfeited to the State, the said amount is reduced to Rs.10,000/- to be forfeited to the State. The petitioner is directed to deposit the amount of Rs.10,000/-, in all with the Tehsildar office, District Moga, within a period of 15 days from the date of receipt of the certified copy of this order.

8. It is made clear that in case the said amount is not deposited within the stipulated time, then the present appeal shall be deemed to have been dismissed.

9. Disposed of in above-said terms.

(KIRTI SINGH)
JUDGE

18.11.2024

Kavita

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No