2025:PHHC:033713

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM M-11701 of 2025
Date of Decision: 04.03.2025

Shri Bhagwan ...Petitioner

Versus

State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Nitin Bhanwala, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of the BNSS, 2023 with a prayer to set-aside the order dated 27.01.2025 (Annexure P-2) passed by the Court of Additional Sessions Judge, Jind, whereby, the application (Annexure P-1) moved by the petitioner for discharging the surety was ordered to be dismissed in a case arising out of FIR No. 904 dated 14.11.2015 under Sections 13, 7, 8 of PC Act read with Section 120-B, 468, 420 of IPC and Section 66 of the IT Act registered at Police Station Jind City, District Jind.

2. Learned counsel for the petitioner contends that a case FIR No. 904 dated 14.11.2015 under Sections 13, 7, 8 of PC Act read with Section 120-B, 468, 420 of IPC and Section 66 of the IT Act

Police Station Jind City was ordered to be registered against Rajesh Khasa, respondent No. 2 and other accused and during investigation, the respondent No. 2 was ordered to be released on bail. The petitioner stood as a surety for respondent No.2/accused and had furnished surety bonds to the satisfaction of the Court, which were accepted and at that time an endorsement was made by the concerned revenue official that in compliance of the order passed by the trial Court, the agricultural land to the extent of the share of the petitioner was attached for the surety amount. During trial, the petitioner/applicant moved an application (Annexure P-1) before the trial Court stating that he wanted to alienate his land. However, due to the above said endorsement, he was not able to alienate his land. Consequently, he did not want to stand as surety for the accused any more and wanted that his surety bonds may be discharged and the endorsement in the revenue record may be ordered to be removed. However, vide the impugned order (Annexure P-2), the prayer made by the petitioner was declined by the Court on the ground that the grounds mentioned in the application were not sufficient and reasonable for allowing the application. Learned counsel further contends that the trial Court had clearly overlooked the mandatory provisions of Section 489 of the BNSS, 2023 and the trial Court had committed grave error while passing the impugned order.

3. On advance notice, Mr. Rajinder Kumar Banku, DAG, Haryana, has appeared on behalf of the State of Haryana and

submitted that the prayer made by the petitioner has been rightly declined by the trial Court and the petition is liable to be dismissed by this Court.

4. I have heard the rival submissions made by learned counsel for the parties and perused the record.

5. Before delving into the question as to the legality of the impugned order, this Court would like to refer to Section 489 of the BNSS, 2023 which is relevant for the purpose of deciding the issue involved in the present case:-

> ***489. 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.*

From a perusal of this section, it is apparent that it is always open to a surety to apply to the Magistrate to discharge the surety bond furnished before him either wholly or partly and in such an eventuality, the Magistrate is to issue warrants of arrest directing the persons 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.

6. In the present case, the petitioner had moved an application for discharge of his surety bonds as he wanted to alienate the land and wanted the entry to be deleted from the revenue record, still, the trial Court rejected the prayer by completely overlooking the mandatory provisions of Section 489 of BNSS, 2023 and wrongly held that the grounds mentioned in the application were not sufficient and reasonable. In fact, a duty was cast on the trial Court to discharge the bond of surety immediately on the application being moved before it and an opportunity should have been given to the accused, in whose favour such bonds were furnished, to find some other sufficient surety. The Court completely overlooked the fact that the petitioner could not be deprived of his right to seek discharge of his bond as a surety. The reliance in this regard may also be placed on the judgments passed by the Hon'ble Supreme Court in the matter of ***Raghubir Singh Vs. State of Bihar: 1986 (40 SCC 481,*** wherein, the Hon'ble Supreme Court observed as under:-

> *"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 ball. 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."*

7. In view of the above discussion, the present petition is allowed and the impugned order dated 27.01.2025 (Annexure P-2) passed by the Additional Sessions Judge, Jind, is ordered to be set-aside. The sureties furnished by the petitioner shall be deemed to be discharged immediately and a direction may be issued to the revenue official to delete the entry in the revenue record with regard to the surety bond. The trial Court is also directed to proceed as per the procedure prescribed in the provisions of Section 489 of BNSS, 2023.

8. All pending applications, if any, are disposed off, accordingly.

04.03.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No