

2025:PHHC:084134



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

201

CRA-S-2113-2023 (O&M)
Date of decision: July 11, 2025

RAMPHAL SINGH

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vikas Lohchab, Advocate
for the appellant.

Mr. Yuvraj Shandilya, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant appeal arises from the impugned order dated 02.02.2023 passed by learned Additional Sessions Judge, Narnaul in connection with FIR No.281 dated 31.10.2019 under Sections 307, 34 of Indian Penal Code, 1860 and Section 25 of Arms Act, 1959, registered at Police Station Sadar Narnaul, District Mahendergarh. The appellant herein had stood surety for the accused Hans Ram @ Hansa, who was facing trial in the aforementioned case.

2. Learned counsel for the appellant submits that the accused Hans Ram @ Hansa failed to appear before the learned trial Court on 02.02.2023, following which proclamation proceedings were initiated, and a recovery certificate under Section 446 Cr.P.C. was issued against the appellant for an amount of Rs.1 lakh. It is the contention of the learned counsel that the impugned order suffers from procedural irregularities and is not in conformity with the due process under Section 446 Cr.P.C.



3. It has been further urged that the appellant was not given a fair and reasonable opportunity to show cause in response to the notice dated 13.01.2023. Instead, the proceedings in accordance with statutory requirements, the learned trial Court directly ordered recovery of the surety amount through the Tehsildar, without adjudicating upon the objections of the appellant or examining the circumstances surrounding non-appearance of accused Hans Ram @ Hansa.

4. It has still further been contended by the learned counsel that the absence of accused was neither willful nor deliberate. In fact, it is submitted, and has not been disputed by the learned State counsel also, that accused Hans Ram @ Hansa was lodged in District Jail, Narnaul in connection with another FIR during the relevant period. Production warrants had, in fact, been issued in the present case but it was the jail authorities, who had not produced the accused. In such a situation, learned counsel argued that the appellant could not be penalized for the non-production of the accused, which was entirely outside his control and knowledge.

5. Still further, it has been brought to the notice of this Court that the appellant had moved an application dated 05.04.2023 seeking withdrawal of the surety furnished by him, annexed as Annexure A-5. However, the said application was dismissed by the learned trial Court vide order dated 27.04.2023 (Annexure A-6) again without appreciating the factual matrix in its proper context.



6. *Per contra*, learned State counsel has opposed the prayer made by the counsel opposite but has not disputed, on instructions, the factual position that accused Hans Ram @ Hansa was indeed lodged in another jail at the relevant time, and production warrants had also been issued. Learned State counsel has also not denied that the jail authorities failed to produce accused Hans Ram @ Hansa, and this lapse could not, therefore, be attributed to the appellant.

7. I have heard learned counsel for the parties and perused the relevant material placed on record.

8. For ready reference, Section 446 Cr.P.C. is reproduced hereinunder: -

“446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Explanation. - A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the



case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code :[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in Civil Jail for a term which may extend to six months] [Inserted by Act 63 of 1980, Section 6 (w.e.f. 23-9-1980).].

(3) The Court may, [after recording its reasons for doing so] [Substituted by Act 25 of 2005 , Section 40 for "at its discretion" (w.e.f. 23-6-2006).], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under Section 106 or Section 117 or Section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under Section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

[446-A. Cancellation of bond and bail-bond. [Inserted by Act 63 of 1980, Section 7 (w.e.f. 23-9-1980).]- Without prejudice to the provisions of Section 446, where a bond under this Code is



for appearance of a person in a case and it is forfeited for breach of a condition –

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition :

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient].”

9. A plain reading of the above provision makes it clear that before initiating recovery proceedings, the Court is mandatorily required to issue a notice to the surety, provide an opportunity to show cause, and record satisfaction as to the absence of sufficient cause. These steps are *sine qua non* for invoking the coercive recovery mechanism.

10. In the present case, it is evident that the learned trial Court failed to conduct an effective inquiry under Section 446 Cr.P.C. The appellant was not given an adequate opportunity to present his explanation as to why the bond should not be forfeited. More importantly, reasons for the

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non-appearance of the accused Hans Ram @ Hansa, his being in judicial custody in another case, were not properly considered.

11. The limited role of the appellant as a surety does not extend to having custodial control over the accused, especially when the accused is in judicial custody in another case. The appellant cannot be faulted for the failure of jail authorities to produce the accused despite production warrants being issued.

12. In such circumstances, this Court has no hesitation to hold that the impugned order suffers from serious procedural infirmities and has resulted in manifest injustice to the appellant.

13. Accordingly, the impugned order dated 02.02.2023 passed by learned Additional Sessions Judge, Narnaul, directing the recovery of surety amount of Rs.1 lakh through the Tehsildar is set aside.

14. Accordingly, the instant appeal is allowed.

15. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 11, 2025*Jaspreet Kaur***(MANJARI NEHRU KAUL)****JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*