

**CRM-M-43491-2024****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****142****CRM-M-43491-2024****Date of Decision : January 14, 2025****GURVINDER SINGH****-PETITIONER****V/S****STATE OF PUNJAB****-RESPONDENT****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

*********KULDEEP TIWARI, J. (ORAL)**

1. Through the instant petition cast under Section 528 of the B.N.S.S., 2023, prayer is made for setting aside the order dated 31.07.2024 (Annexure P-4), whereby, the learned Additional Sessions Judge, Tarn Taran, has dismissed the petitioner's application (Annexure P-3) for withdrawing the surety bond furnished for release of the truck in favour of accused Shamsher Singh, in case arising out of FIR No.114 dated 28.07.2023, registered under Section 15(C), 18 of the N.D.P.S. Act (Offence under Section 29 of the N.D.P.S. Act added subsequently), at P.S. Sirhali, District Tarn Taran.

2. Opening his arguments, the learned counsel for the petitioner draws attention of this Court towards the mandate enclosed in Section 444 of the Cr.P.C., which becomes prescribed the mode and manner for discharge of sureties. Section 444 of the Cr.P.C. is reproduced hereunder:-

**CRM-M-43491-2024**

“444. 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.”

3. By referring to the hereinabove extracted Section 444, the learned counsel for the petitioner submits that, in the instant case, after release of the vehicle in question on superdari, the accused misused the same inasmuch as it was involved in commission of a similar offence in FIR No.74 dated 07.02.2024, under Section 15-61-85 of the N.D.P.S. Act, registered at P.S. Sangriya (Hanumangarh, District Rajasthan). Therefore, in these circumstances, the learned trial Court was under a statutory obligation to, upon an application (Annexure P-3) becoming filed by the petitioner for withdrawing the superdari/surety bond furnished, direct the accused to produce the vehicle in question and only upon the accused's failure to do so, the proceedings under Section 446 of the Cr.P.C. could have been initiated against the petitioner.

4. *Per contra*, the learned State counsel places on record the reply 12.01.2025 and defends the legality of the impugned order. He submits that, since the vehicle in question has, consequent upon its being used in commission of a similar offence, already been impounded, therefore, the



CRM-M-43491-2024

petitioner's application (Annexure P-3) has rightly been dismissed.

5. This Court has heard the submissions made by the learned counsels for the contesting litigants and also perused the record.

6. Perusal of the hereinabove extracted Section 444 of the Cr.P.C. reflects that, upon an application alike the one enclosed in Annexure P-3 becoming preferred by a surety for withdrawing the surety bond, the trial Court is required to issue summons to the accused with a direction to produce the property/vehicle in question. In case of the accused failing to produce the property/vehicle in question, the trial Court is required to initiate proceedings under Section 446 of the Cr.P.C. against the surety to indemnify the State in terms of the bonds.

7. In summa, this Court is of the opinion that, the impugned order warrants interference inasmuch as Section 444 of the Cr.P.C. has not been complied with in its letter and spirit. Consequently, the impugned order is **set aside** and the matter is remanded to the trial Court for making afresh decision on the petitioner's application (Annexure P-3) in view of the hereinabove made discussion.

8. Disposed of accordingly.

January 14, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No