

PUNJAB AND HARYANA HIGH COURT

Before: *Jasjit Singh Bedi, J.*

Rajinder Singh & Another – Petitioners

Versus

State of Haryana & Another – Respondents

CRM-M-1378 of 2017

07.11.2023

Criminal Procedure Code, 1973 (2 of 1974), Section 446 – Bail bond – Forfeiture of surety bond of Rs.2 lacs – Admittedly, the convict has surrendered – Petitioners are not stated to be professional sureties – There is nothing to suggest that they had facilitated the escape of the convict or were aware of the likelihood of his absconding – Lenient view can be taken – Reduced to Rs. 25,000/- . [Para 12, 13]

Cases referred:

1. Malook Singh Versus State of Punjab, CRA-S-1027-2022, decided on 04.05.2023.

2. Akhilesh Kumar & another versus State of Haryana, CRM-M-28978-2011, decided on 10.07.2012.

Mr. Krishan Singh, Advocate for the petitioner. Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J. –

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 21.11.2016 (Annexure P-4) passed by respondent No.2 i.e. District Magistrate, Rewari whereby the petitioners have been directed to deposit the surety amount of Rs.2,00,000/- mentioned in the surety bonds executed by the petitioners for getting the convict Jitender @ Monu son of Gulshan Kumar released on parole who was undergoing life imprisonment after being convicted in FIR No.90 dated 24.06.2008 registered under Sections 302, 34, 120-B IPC and Section 25 of Indian Arms Act at Police Station Rampura, District Rewari.

2. The brief facts of the case are that convict Jitender @ Monu son of Gulshan Kumar was convicted and sentenced to life imprisonment by the Court of Additional Sessions Judge, Rewari in FIR No.90 dated 24.06.2008 under Sections 302, 34, 120-B IPC and Section 25 of Indian Arms Act Police Station Rampura, District Rewari.

3. The said convict was confined in District Jail, Faridabad and filed an application for grant of four weeks parole. On verification, he was granted the same. At that stage, he was directed to produce surety of the amount of Rs.2,00,000/- for his release. The petitioners

are stated to have stood surety for him and had furnished the surety bond for a sum of Rs.2,00,000/- for the release of the convict on four weeks parole. Ultimately, the convict was released by the Superintendent, District Jail Faridabad on 21.07.2016 and he was directed to surrender in Jail on 19.08.2016.

4. As the convict did not surrender, respondent No.2 issued a show cause notice dated 26.08.2016 to the petitioners stating that on 11.07.2016, the petitioners had furnished a surety bond for a sum of Rs.2,00,000/- for the release of convict Jatinder @ Monu son of Gulshan Singh but the convict had failed to surrender in Jail and had therefore, violated the terms and conditions of the bond. The petitioners were directed to file a reply to the notice within 15 days. A copy of one such notice dated 26.08.2016 is annexed as Annexure P-1.

5. The petitioners filed their respective replies to the show cause notice. Petitioner No.1 stated that he was 70 years old and suffering from various ailments and was unable to deposit the surety amount but would make an attempt to produce the convict before the Jail authorities. The stand taken by petitioner No.2 was more or less similar.

6. Be that as it may, respondent No.2 i.e. the District Magistrate, Rewari vide his order dated 21.11.2016 ordered the forfeiture of the surety amount of Rs.2,00,000/- as mentioned in the surety bond of the petitioners and the petitioners were directed to deposit an amount Rs.2,00,000/- within a period of 45 days. A copy of the impugned order dated 21.11.2016 is annexed as Annexure P-4.

7. It is this order which is under challenge in the present petition.

8. The learned counsel for the petitioners contends that petitioner No.1 is an old person of the age of 70 years. He is suffering from various diseases like hypertension heart disease etc. and he was a poor person. So far as petitioner No.2 was concerned, he had passed away. There was no evidence to suggest that the petitioners had connived with the convict or had hatched a conspiracy so as to facilitate his escape pursuant to his release on parole. There was also no evidence that the petitioners had any knowledge about the likelihood of the convict absconding. Even otherwise, convict Jitender @ Monu has since surrendered and was in custody. Therefore, the impugned order was liable to be quashed or in the alternate the impugned order could be modified and the surety amount could be reduced. Reliance is placed on the judgments in the case of **Malook Singh Versus State of Punjab, CRA-S-1027-2022, decided on 04.05.2023** and **Akhilesh Kumar & another versus State of Haryana, CRM-M-28978-2011, decided on 10.07.2012**.

9. On the other hand, the learned State counsel contends that the petitioners was very well aware about the fact that they were executing surety bonds for the convict and the amount of Rs.2,00,000/- as surety was in their knowledge. Once they were aware of the consequences of their action, no illegality could be found in the order of the District Magistrate and therefore, no circumstances existed warranting the interference of this Court with the impugned order. He, however, concedes that Jitender @ Monu has since surrendered and is currently in custody.

10. I have heard the learned counsel for the parties.

11. This Court in ***Malook Singh Versus State of Punjab, CRAS-1027-2022, decided on 04.05.2023***, it was held as under:-

"6. Admittedly, the appellant stood as surety for Gurpal Singh @ Bhalla in FIR No.91 dated 16.04.2019 under Sections 15, 18, 29 of NDPS Act registered at Police Station Sirhind, District Fatehgarh Sahib. After appearing for sometime Gurpal Singh @ Bhalla absconded from the Trial consequent to which the impugned order came to be passed. There is absolutely no evidence to suggest that the appellant facilitated his escape or connived with him (accused-Gurpal Singh @ Bhalla) so as to enable him to disassociate himself from the Trial. On the contrary, subsequently on the efforts of the appellant, Gurpal Singh @ Bhalla surrendered before the concerned Court. In the case of Mohd. Kunju Vs. State of Karnataka, 1999(4) RCR (Criminal) 726 (SC), the accused had fled from India and had gone to a foreign country. The Hon'ble Apex Court held that there was nothing to suggest that the surety had any remote scent, that the accused was preparing to escape from India, nor was there any evidence to suggest that the surety had connived with the accused, who jumped the bail. Under these circumstances, the Apex Court reduced the penalty to a sum of Rs.5,000/- from the amount of Rs.50,000/- which was imposed on the surety by the Trial Court. In Madhu Limaye Vs. Metropolitan Magistrate, 1984 (Supplementary) Supreme Court cases, 699, a three judge Bench of the Apex Court, reduced the penalty to a nominal sum of Rs.100/- in a case, in which the accused, some foreign nationals, escaped from India and were never arrested. In the case of Harbhajan Singh Vs. State of Punjab 2008(4) RCR (Criminal) 410 the penalty imposed of Rs.40,000/- was reduced to Rs.20,000/-.

7. In view of the facts and circumstances as enumerated above and also the observations made in the aforementioned judgments, the reduction in the amount of penalty is warranted in the instant case. Therefore, the appeal is partially accepted. The order dated 16.12.2021 is modified to the extent that the penalty of Rs.50,000/- imposed upon the appellant-surety is reduced to Rs.10,000/. The Chief Judicial Magistrate, Fatehgarh Sahib is directed to ensure compliance of this order.

8. The appeal is partially accepted in the aforesaid terms."

(emphasis supplied)

In *Akhilesh Kumar & another versus State of Haryana, CRM-M-28978-2011, decided on 10.07.2012*, it was held as under:-

Since the petitioners have proposed not to challenge the impugned order on merits but have confined their arguments with regard to the quantum of the amount forfeited, therefore, the impugned order dated 24.01.2011 is upheld so far as forfeiture of the surety bonds furnished by the petitioners are concerned. However, keeping in view the facts that the convict who was released on parole has now surrendered and undergoing the remaining sentence; the petitioners not being the professional sureties and the fact that the penalty imposed upon each of the petitioner is on higher side, this court is of the considered opinion that the petitioners deserve to be extended some concession. Accordingly, the order dated 24.01.2011 passed by learned District Magistrate, Rewari, is

hereby modified to the extent that each of the petitioner would now deposit ` 50,000/- (i.e. Rs. 50,000/- + Rs. 50,000/- = Rs. 1,00,000/-) within one month of passing of this order.

12. In the instant case, admittedly, the convict has surrendered. The petitioners are not stated to be professional sureties. There is nothing to suggest that they had facilitated the escape of the convict or were aware of the likelihood of his absconding. Therefore, a lenient view can be taken in the facts and circumstances of this case.

13. In view of the above, the impugned order dated 21.11.2016 (Annexure P-4) passed by respondent No.2 i.e. District Magistrate, Rewari is hereby modified to the extent that petitioner No.1 and the legal representatives of petitioner No.2 would deposit a sum of Rs.25000/- within one month of the passing of this order.

14. The Chief Judicial Magistrate, Rewari is directed to ensure the compliance of this order.