



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 6290/2024

Visha Bhai S/o Shri Lila Bhai, Aged About 55 Years, R/o Gayatri
Nagar, Ahamdabad (Gujarat)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Abhimanyu Khatri.
For Respondent(s) : Mr. Vikram Rajpurohit, P.P.
Mr. R.S. Bhati, AGA

HON'BLE MR. JUSTICE ARUN MONGA

Order

18/09/2024

1. Petitioner accused seeks quashing of order dated 24.01.2019 passed by learned Additional Civil Judge cum Metropolitan Magistrate No.1, Jodhpur Metropolitan (Now Judicial Magistrate No.1 Jodhpur) in Criminal Case No. 211/2009 under Sections 279 and 337 of IPC, vide which, learned trial court declared the petitioner as an absconder, forfeited his bail bonds and also directed to initiate the proceedings under Sections 82 & 83 Cr.P.C. against petitioner and under Section 446 Cr.P.C. against his surety separately.

2. At the very outset, on a Court query posed to learned counsel for the petitioner as to how the instant petition, which has been belatedly filed in the year 2024, to assail an order dated 24.01.2019 after almost 4 and a half years, is maintainable, he apprises that it is only recently the steps are being taken to



implement order assailed herein and until then, the petitioner was not aware of the passing of the same. He submits that after passing the impugned order and declaring the petitioner as an absconder, the file was consigned to record room by the learned trial court.

3. Learned counsel for the petitioner submits that on the fateful day the petitioner was unable to appear before trial court due to his son's accident. He was not properly informed by his counsel about requirement of his personal presence in the trial proceedings. Despite these circumstances, the learned trial court did not consider the petitioner's grievance and ordered the forfeiture of his bail bonds. Additionally, the court initiated proceedings under Sections 82 & 83 Cr.P.C. against him and under Section 446 of the Cr.P.C. against his surety. The petitioner's inability to appear was due to unforeseen circumstances beyond his control.

3.1 Since the file was consigned to the record room by the learned trial court, the lawyer representing the petitioner in the trial proceedings stopped appearing in the matter, and thereafter the petitioner did not hear anything from him. Due to a lack of communication coupled with the misunderstanding created by circumstances beyond the control of the petitioner, he gathered the impression that the pending criminal proceedings before the trial court had been dropped against him, and he thus became lax in following up on the matter before the learned trial court. Dereliction on the part of the petitioner, under no circumstances, can be termed as intentional, canvasses the learned counsel for



the petitioner. Therefore, arrest warrant may be converted into bailable warrant, he argues.

4. Learned PP would support the impugned order passed by both the learned court below for the reasons stated therein.

5. In somewhat similar circumstances, I have had an occasion to render a judgment in case title **Mohammad Haras Vs. State of Punjab & Ors.**¹, relevant whereof, for ready reference, is reproduced as below :-

“6. No doubt, learned trial Court has got discretion to cancel the bail, however, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford him an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned Judge, Special Court, Sangrur in the instant case. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

7. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein”

6. As regards the directions issued by the learned trial court to proceed against the sureties under Section 446 Cr.P.C., the same is also a serious procedural fallacy committed by the learned trial Magistrate and cannot be sustained. In a reported case titled **Varinder Singh Vs. State of Punjab**², relevant whereof, for ready reference, is reproduced hereinbelow:-

“9. In the light of the statutory provisions of sections 444 and 446 of the Code and, the observations recorded above, I am of the opinion that the following procedure and principles governing the discharge of a surety and when necessary, for forfeiting the bond and the further steps to be taken for imposing the penalty upon the surety need to be kept in mind by the courts :-

A. DISCHARGE OF SURETY

A.1 . Surety can seek discharge at any stage : An individual who has stood surety for someone released on bail has the right to apply to

1 Punjab & Haryana High Court - CRM-M No.31385/2023, decided on 07.07.2023

2 Punjab & Haryana High Court - 2023:PHHC:104379



the Court to be discharged from his responsibilities. He can seek a complete discharge from the bond.

A.2. *Warrant of Arrest for accused:* Upon receiving the application from the surety, the Court will issue a warrant of arrest for the person concerned who was released on bail to be produced before the Court.

A.3 *Appearance of the bailed Person:* Once the person concerned is brought before the Court through the warrant of arrest or otherwise appears, the Court shall direct the surety bond to be discharged.

A.4. *Finding New Sureties:* Once the Court orders the discharge of the bond for the surety, the person who was released on bail will be required to find other sufficient surety.

A.5. *Consequences of Failure:* If the person who was released on bail fails to find other sufficient surety as required, the Court may commit him to jail.

B. FOR FORFEITING THE SURETY BOND AND IMPOSING PENALTY

B.1 *Forfeiture of bond and proof :-* If a bond is executed for the appearance of an individual before a court or for the production of property and it is proven to the satisfaction of the court that the bond has been forfeited, the court must record the grounds for such proof. Similarly, if a bond is forfeited in any other context, the court must also record the grounds for forfeiture.

B.2 . *Notice and penalty :-* The court may then call upon the person who is bound by the bond (surety) to either pay the penalty specified in the bond or to show cause why the penalty should not be paid. If sufficient cause is not shown and the penalty is not paid, the court can take action to impose the penalty.

B.3 *Discretionary Remission :-* The court has the discretion to remit (reduce) a portion of the penalty and enforce payment only for the remaining amount, implying that forfeiture of the bond by itself does amount to imposition of the penalty and a specific order has to be passed for imposing penalty.

B.4 *Civil imprisonment in default of payment of penalty* If the penalty imposed is not paid or cannot be recovered, the surety may be liable for imprisonment in a civil jail for a period up to six months.

B.5. *Surety's death :-* If a surety to a bond dies before the bond is forfeited, his estate is relieved of any liability related to the bond.

B.6. *Use of Conviction as evidence :-* If a person who has provided security under section 106 or section 11 or section 360 of the Code 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 of the Code (for a minor), a certified copy of the court's judgment can be used as evidence against the surety. The court will presume that the offense was committed by the same person unless evidence to the contrary is provided.”



7. Qua issuance of process under Sections 82 & 83 of Cr.P.C. against the petitioner herein, reference may be had to a Punjab and Haryana High Court judgment rendered in case of **Pradeep Kumar Vs. State of Punjab and Anr.**³, decided on 23.08.2023.

Relevant thereof is extracted hereinbelow:-

"13.1 *The declaration of an individual as a proclaimed person or offender, as contemplated under Section 82 of the Code of Criminal Procedure (hereafter referred to as 'the Code'), carries with it the consequential implication of attachment and sale of his property as delineated in Sections 83, 84, and 85 of the Code. Furthermore, such a declaration triggers the criminal liability of the individual under Section 174-A of the Indian Penal Code, with a potential sentence of up to seven years of imprisonment, coupled with a monetary penalty. This, in turn, has profound and far-reaching ramifications, significantly affecting the fundamental rights to life, liberty and property of the concerned individual. Hence, it becomes imperative that the Courts meticulously adhere to the statutory requirements in letter and spirit both, duly reflecting their compliance on the record prior to pronouncing an individual as a proclaimed person or offender and invoking criminal liability under the aforementioned section.*

13.2 *Section 82(1) of the Code mandates that a proclamation shall require the concerned individual to appear at a specified place and time, with no less than thirty days' notice from the date of proclamation publication. Sub-Section (2) provides comprehensive guidance on the publication of proclamations, while sub-Section (3) firmly establishes that a written statement by the issuing Court shall be conclusive evidence of compliance with the requirements of this Section. Additionally, Section 83(1) empowers the Court, to order the attachment of any property, whether movable or immovable, belonging to the proclaimed individual, for reasons recorded in writing.*

13.3 *In cases where an accused person fails to appear even after publication of the proclamation under Section 82(1) of the Code, the Court can initiate action as per procedure outlined in Sections 83, 84, and 85 of the Code for the attachment and sale of their property. Furthermore, the Court may proceed with the examination of witnesses in the individual's absence, as stipulated in Section 299 of the Code.*

x-x-x-x-x

19. *Before parting with the case, having had the benefit of judgment in Sunil Tyagi supra, it is considered desirable to frame guidelines for issuance of a proclamation under Section 82 of the Code of Criminal Procedure, its publication, declaring the*





concerned person as 'proclaimed person' or 'proclaimed offender' and where considered necessary, to invoke criminal proceedings against person for offence under Section 74-A of IPC (Sic 174-A). Accordingly, the following guidelines are being framed:

Issuance of proclamation :

- i. Preceding the issuance of the proclamation under section 82 Cr.P.C., the Court must deliberate upon its previous efforts to secure the presence of the through other legally permissible means. These efforts encompass the issuance of summons, the execution of bailable and/or non-bailable warrants against the accused. The Court must thoroughly document the results stemming from these endeavours, accompanied by pertinent facts and comprehensive details. It is incumbent upon the Court to satisfactorily ascertain that the individual in question has indeed absconded or is concealing himself to evade execution of warrant of arrest.
- ii. The phrase "**reason to believe**," as articulated in Section 82 of the Code of Criminal Procedure, signifies that the Court must derive its belief from the available evidence and materials that the concerned person has absconded or is concealing himself to evade execution of warrant of arrest.
- iii. Furthermore, in the proclamation, it must be set forth as to where and when the concerned individual must present himself. A designated location and time must be stipulated. Importantly, the specified date and time for appearance should not be less than a thirty-day from the date of publication of the proclamation.

Publication of proclamation–

- iv. The publication of a proclamation, as outlined in Section 82(2) of the Code of Criminal Procedure, mandates adherence to all three prescribed modes, namely:
 - (a). The public reading of the proclamation in a conspicuous location within the town or village where the individual ordinarily resides.
 - (b) The affixation of the proclamation at a prominent spot at the individual's house or homestead.
 - (c) The display of the proclamation at a prominent location within the precincts of the court house.
- v. All the aforesaid three modes of publication of a proclamation have to be adhered to. Failure to follow all or any of them renders the proclamation invalid in the eyes of the law. This is because the three sub-clauses (a) to (c) are mutually exclusive.
- vi. If the Court so feels, in addition to the aforementioned trio of methods for securing the accused's presence, it may, at its discretion, also direct the publication of a copy of the proclamation in a daily newspaper circulating within the geographical area where the said individual ordinarily resides.
- vii. If the Court, in its discretion orders publication of proclamation in newspaper, it shall also direct that the newspaper agency, upon the publication of the proclamation in the newspaper, shall dispatch a copy thereof to the accused's address, as is the procedure observed in civil matters, in terms of Order 5 Rule 10 of the Code of Civil Procedure. In essence, this supplementary





measure ensures that the accused is duly apprised of the legal proceedings against him.

Declaration as "proclaimed person" or "proclaimed offender:

viii. Prior to the declaration of the concerned individual as a "proclaimed person" or "proclaimed offender," the Court shall pass a speaking order stating relevant facts and record its satisfaction that the proclamation has been duly and properly published in the prescribed manner.

ix. Furthermore, it must ensure that a period of not less than thirty days has expired between the date of publication of the proclamation and the date indicated in the proclamation for the individual's appearance. If the interval between the proclamation's publication and the date specified therein for appearance falls short of thirty days, such a publication of the proclamation cannot serve as the foundation for designating the individual in question as a "proclaimed person" or "proclaimed offender."

8. In light of the aforesaid, I am of the view that the impugned order directing the forfeiture of the bail-bonds of the petitioner accused and initiating proceedings under Sections 82 & 83 Cr.P.C. against him and his surety under Section 446 Cr.P.C., *ibid*, has to be necessarily set aside. It is so ordered.

9. Consequently, the impugned order dated 24.01.2019 is set aside. The original bail bonds of the petitioner accused as well as bonds of his sureties are restored and trial to proceed further, in accordance with law.

10. Disposed of accordingly.

11. Pending application(s), if any, also stand disposed of.

(ARUN MONGA),J

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Whether Fit for Reporting:

Yes / No