

Before Vikas Bahl, J.

RITESH—Petitioner

versus

STATE OF HARYANA AND ANOTHER—Respondents

CRM-M No.6352 of 2022

February 14, 2022

Code of Criminal Procedure, 1973—S. 482 read with S.444—Indian Penal Code, 1860—Ss.148, 149, 212, 308, 323, 325 and 506—Withdrawal of surety against accused— Section 444 shows that it is open to surety to apply to Magistrate to discharge bond, either wholly or so far as relates to applicant, and on such application being made, Magistrate is required to issue warrant of arrest directing person so released to be brought before him and on appearance of person, Magistrate required to direct bond to be discharged, either wholly or so far as relates to applicant and Magistrate is required to call upon accused to find other sufficient sureties and in case, he fails to do so, he may commit him to jail—Apparently, provisions of Section 444 of Cr.P.C., 1973 not brought to notice of Court—Therefore, rejection of claim for withdrawal of surety against accused set aside—Direction to decide application for withdrawal of surety bond of accused afresh.

Held that, a perusal of the above Section would show that it is open to the surety to apply to the Magistrate to discharge the bond, either wholly or so far as relates to the applicant, and on such application being made, the Magistrate is required to issue warrant of arrest directing the person so released to be brought before him and on appearance of the said person, the Magistrate is required to direct the bond to be discharged, either wholly or so far as relates to the said applicant and the Magistrate is required to call upon the accused to find other sufficient sureties and in case, he fails to do so, he may commit him to jail

(Para 7)

Further held that, a perusal of the impugned order would show that apparently, the above provisions of section 444 of Cr.P.C., 1973 had not been brought to the notice of the Court and thus, the Court had not considered the same.

(Para 8)

Further held that, keeping in view the abovesaid facts and

circumstances, the present petition is allowed and the order dated 06.01.2022 (Annexure P-2) passed by the Additional Sessions Judge, Sonapat is set aside and the Additional Sessions Judge, Sonapat is directed to decide the application dated 26.11.2021 (Annexure P- 1), for withdrawal of surety bond of Pankaj/accused (respondent No.2), afresh.

(Para 9)

Radhe Syam Sharma, Advocate
for the petitioner.

Manish Dadwal, A.A.G., Haryana

VIKAS BAHL, J. (ORAL)

(1) This is a petition filed under Section 482 read with Section 444 Cr.P.C. with the prayer to set aside the impugned order dated 06.01.2022 (Annexure P-2) passed by the Additional Sessions Judge, Sonapat, whereby the application/claim of the petitioner for withdrawal of surety against the accused Pankaj (respondent No.2), has been rejected.

(2) Learned counsel for the petitioner has submitted that Pankaj/accused (respondent No.2) was granted the concession of regular bail in FIR No.358 dated 22.09.2018 registered under Sections 148, 149,212, 308, 323, 325 and 506 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Murthal, District Sonapat, in which, the present petitioner had furnished surety of an amount of Rs.70,000/- (Landed Property) in favour of respondent No.2/accused. It is further submitted that the petitioner has learnt that during the pendency of the trial in the case, the said accused/Pankaj (respondent No.2) had committed another offence i.e. FIR No.394 of 2020 registered under Section 302 of the IPC at Police Station Rai, District Sonapat and is now presently confined in District Jail, Sonapat. In view of the said circumstances and other aspects, the petitioner had moved an application dated 26.11.2021 (Annexure P-1) for withdrawal of surety bonds furnished in favour of Pankaj/accused (respondent No.2).

(3) Learned counsel for the petitioner has contended that the Additional Sessions Judge, Sonapat, without considering the provisions of Section 444 of Cr.P.C., had rejected the application (Annexure P-1). It is further contended that the provisions of Section 444 of Cr.P.C. have not been considered, thus, the impugned order deserves to be set aside on the said ground alone and fresh order

deserves to be passed on the said application after taking into consideration the provisions of Section 444 of Cr.P.C. Notice of motion.

(4) On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that the perusal of the impugned order would show that in fact, Section 444 of Cr.P.C., as is apparent, has not even been brought to the notice of the Additional Sessions Judge, Sonapat.

(5) This Court has heard the learned counsel for the parties and has perused the paper book.

(6) It is not in dispute that Pankaj/accused (respondent No.2) was an accused in FIR No.358 dated 22.09.2018 registered under Sections 148, 149, 212, 308, 323, 325 and 506 of the IPC at Police Station Murthal, District Sonapat. The petitioner had furnished a surety of an amount of Rs.70,000/- (Landed Property) in favour of the said Pankaj. The said Pankaj (respondent No.2) was subsequently involved in FIR No. 394 of 2020 registered under Section 302 of the IPC at Police Station Rai, District Sonapat. The petitioner had moved an application dated 26.11.2021 for withdrawal of the said surety bond. The said application has been dismissed by the Additional Sessions Judge, Sonapat vide order dated 06.01.2022 without considering the provisions of Section 444 of Cr.P.C.. Section 444 of Cr.P.C. is reproduced hereinbelow:-

“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.”

(7) A perusal of the above Section would show that it is open to the surety to apply to the Magistrate to discharge the bond, either wholly or so far as relates to the applicant, and on such application being made, the Magistrate is required to issue warrant of arrest directing the person so released to be brought before him and on appearance of the said person, the Magistrate is required to direct the bond to be discharged, either wholly or so far as relates to the said applicant and the Magistrate is required to call upon the accused to find other sufficient sureties and in case, he fails to do so, he may commit him to jail.

(8) A perusal of the impugned order would show that apparently, the above provisions of Section 444 of Cr.P.C. had not been brought to the notice of the Court and thus, the Court had not considered the same.

(9) Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the order dated 06.01.2022 (Annexure P-2) passed by the Additional Sessions Judge, Sonapat is set aside and the Additional Sessions Judge, Sonapat is directed to decide the application dated 26.11.2021 (Annexure P-1), for withdrawal of surety bond of Pankaj/accused (respondent No.2), afresh.

(10) It is, however, clarified that while deciding the application dated 26.11.2021 (Annexure P-1), afresh, the provisions of Section 444 of Cr.P.C. be also taken into consideration by the Additional Sessions Judge, Sonapat. The said application would be decided within a period of one month from the date of receipt of certified copy of the present order.

(11) The fresh order on the application be passed after hearing all the concerned parties and considering the said provision.

(12) It is made clear that this order has been passed without issuance of notice to respondent No.2 as the same is not prejudicial to his rights as the fresh order on application dated 26.11.2021 will be passed after hearing all the concerned parties and issuance of notice to him would unnecessarily delay the proceedings.