

CRA-S-661-SB-2004

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

CRA-S-661-SB-2004
Reserved on: 12.03.2025
Pronounced on: 25.03.2025

Mahabir ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. B.S. Mamli, Advocate
for the appellant.

Ms. Trishanjali Sharma, D.A.G., Haryana.

ANOOP CHITKARA, J.

1. Aggrieved by judgment dated 01.03.2004 passed by Additional Sessions Judge, Yamuna Nagar in CrI. Misc. No.446 CrPC No.24 of 28.07.2003, the surety has come up before this Court.

2. The appellant had stood surety for one Sunder Giri on 20.12.2000, however Sunder Giri absented from the proceedings and consequently, notice under Section 446 CrPC was served on the appellant and penalty of Rs.20,000/- was imposed. Appellant approached this Court and order was set aside on the ground that the proceedings were taken in a casual manner and matter was remanded. Again, a notice was served upon the surety who sought time to produce the accused. The case was adjourned on number of dates but the appellant could not produce the accused. The concerned trial Court did not find truth in the explanation given by the surety for not producing the accused and did not reduce the penalty of Rs.20,000/-. Feeling aggrieved the surety had come up before this Court. The grounds taken by the surety at the time of filing of appeal on 17.03.2004 were that the appellant was a poor person and he stood as surety in good faith and cannot be forced to deposit sum of Rs.20,000/-.

3. An analysis of the above facts would lead to the following outcome. Needless to say that once a person stands as a surety for an accused, the burden shifts on such surety to produce such an accused. However, there is a dearth of data that how many sureties were able to produce the accused. Practically speaking, unless the surety is closely related to the accused or is a neighbor or a very close friend, no accused would

CRA-S-661-SB-2004

pay heed to the advise of such surety to come and appear before the Court, provided the accused was intentionally and willfully abstaining from appearing in the Court. Perusal of the proceedings under Section 446 CrPC are silent about the reasons based on which appellant had stood surety for the accused i.e. why did he forward to stand surety. Moreover, during a long spell, police who was assigned arrest warrant was also unsuccessful to arrest the accused. If appellant had any knowledge qua the presence of accused anywhere, in that case, he may get him arrested which shows that appellant was not aware of whereabouts of accused.

4. In the absence of any reason for which the appellant had stood as surety for Surinder, it would be prudent and safe to assume that the stand of the appellant that despite his best efforts, he could not produce the surety would be justifiable. It was at the time of accepting of surety that the Court should have been careful and considered that whether the surety was in a position to produce the accused or not. Given above, the appeal is allowed. Impugned judgment is quashed and set aside.

(ANOOP CHITKARA)
JUDGE

25.03.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.