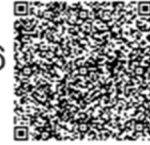


2026:PHHC:089006



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

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CRM-M-32293-2026 (O&M)

Date of decision: 03.07.2026

Bhagat Ram and another**...Petitioners****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. B. S. Beniwal, Advocate
for the petitioners.

Ms. Himani Arora, DAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for setting aside the order dated 02.05.2026 (Annexure P-6), passed by the Court of learned Chief Judicial Magistrate, Fatehabad in case arising out of FIR No. 126 dated 01.06.2018, registered under Sections 285 and 365 of IPC and Section 25 of the Arms Act at Police Station Bhattu Kalan, District Fatehabad, whereby an application filed by the petitioners seeking withdrawal/change of the surety furnished by them on behalf of accused Vikram was dismissed. A further prayer has been made for directing the trial Court to permit the petitioners to withdraw the surety bonds furnished by them and to accept fresh surety bonds to be furnished on behalf of the accused in accordance with law.

2. The facts, shorn of unnecessary details, are that accused Vikram and others were convicted by the learned Additional Sessions Judge, Fatehabad in the aforesaid case. During the pendency of the appeal, this Court, vide order dated 15.10.2024, suspended the sentence of accused Vikram and Balraj and directed their release on bail, subject to furnishing adequate bail and surety bonds before the concerned Chief Judicial Magistrate/Duty Magistrate. In compliance with the aforesaid order, accused Vikram furnished bail bonds before the Chief Judicial Magistrate, Fatehabad and the present petitioners stood as his sureties. The surety was secured on the strength of the petitioners' agricultural land and an appropriate rapat entry was also incorporated in the revenue record (*Jamabandi*) reflecting the liability undertaken by them as sureties. Subsequently, the petitioners decided to dispose of the agricultural land over which the surety stood recorded. Since the accused had expressed his willingness to furnish another solvent surety in their place, the petitioners moved an application before the learned Chief Judicial Magistrate seeking permission to withdraw the surety furnished by them and for acceptance of a fresh surety bond. The application remained pending for some time and, ultimately, vide order dated 02.05.2026, the learned Chief Judicial Magistrate dismissed the same observing that as the bail bonds had been accepted in compliance with the order passed by the High Court, the trial Court could not modify the same and that any such change could be effected only under orders of this Court. Aggrieved against the said order, the present petition has been filed.

3. Learned counsel for the petitioners has argued that the impugned order is not sustainable in the eyes of law as it suffers from a complete misappreciation of the legal position. It is argued that the petitioners are not

seeking modification of the order granting suspension of sentence or bail passed by this Court. The prayer is confined only to permitting the existing sureties to stand discharged and to allow the accused to furnish a fresh surety in their place. It is further argued that a surety cannot be compelled to continue indefinitely against his wishes. Once the petitioners sought their discharge as sureties of the said accused, then it was incumbent upon the Magistrate concerned to do so in compliance of the provisions of Section 489 of BNSS (*erstwhile Section 444 of Cr.P.C.*), which are mandatory in nature but in a casual, mechanical and arbitrary manner and by proceeding against the provisions of law, the impugned order has been passed rejecting the prayer of the petitioners by observing that permitting withdrawal of the surety would amount to modifying the order passed by this Court, whereas in fact the conditions of bail remain wholly unchanged and only the identity of the surety is sought to be substituted.

4. It is further argued that the petitioners intend to sell their agricultural land, which presently remains burdened because of the rapat entry made in the revenue record pursuant to the surety bonds. Continuation of the surety against their wishes causes them undue hardship despite the accused having expressed readiness to furnish another solvent surety. It is also submitted that the Court concerned erred in observing that it lacks jurisdiction to entertain such a request. While relying upon the judgment of this Court rendered in ***Ritesh v. State of Haryana, CRM-M-6352-2022***, decided on 14.02.2022, it is urged by learned counsel for the petitioners that the petition deserves to be allowed and the impugned order is liable to be set aside.

5. Notice of motion.

6. Learned State counsel, who has advance notice of the petition, has argued that there is no infirmity or illegality in the impugned order as once the petitioners stood sureties for the above named accused and furnished bonds giving copies of *jamabandis* of land owned by them by way of security, they could not be discharged subsequently merely because they want to sell the said land. As such, it is urged that the petition does not deserve to be allowed.

7. This Court has heard the rival submissions.

8. A perusal of the record leaves no manner of doubt that the accused Vikram was convicted by the learned trial Court and during the pendency of his appeal, this Court, vide order dated 15.10.2024, suspended the sentence awarded to him subject to his furnishing personal and surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate. In compliance thereof, the present petitioners stood sureties for the accused and the requisite bonds were accepted by the Court concerned. Subsequently, when the petitioners sought discharge from their obligations as sureties by moving an appropriate application, the learned Chief Judicial Magistrate dismissed the same solely on the premise that since the surety bonds had been accepted pursuant to the order passed by this Court, permitting their discharge would amount to modifying the order of suspension of sentence. In the considered opinion of this Court, the approach adopted by the learned Magistrate is legally unsustainable. The petitioners were not seeking any modification of the order granting suspension of sentence or of the conditions of bail imposed by this Court. Their prayer was confined only to being discharged from the obligations undertaken by them as sureties, coupled with the willingness of the accused to furnish fresh sureties in their place. The learned Magistrate, therefore, fell in

error in treating the application as one seeking modification of the order passed by this Court.

9. Further, this Court would like to refer to Section 489 of BNSS (*erstwhile Section 444 of Cr.P.C.*) which is relevant for the purpose of deciding the present petition and is reproduced below:

"489. 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.

10. A plain reading of the aforesaid provision leaves no room for ambiguity. It expressly confers a statutory right upon a surety to seek discharge from the bond at any stage. It casts a mandatory obligation upon the Magistrate to issue a warrant securing the presence of the accused and upon his appearance or voluntary surrender, to discharge the existing surety and call upon the accused to furnish fresh and sufficient sureties. Only in the event of the accused failing to furnish such sureties, the Magistrate can commit him to custody.

11. In the present case, the procedure prescribed under Section 489 of BNSS was not followed at all. Instead of securing the presence of the accused

and affording him an opportunity to furnish fresh sureties, the learned Chief Judicial Magistrate rejected the petitioners' application at the threshold on the erroneous assumption that permitting discharge of the sureties would amount to altering or modifying the order of suspension of sentence passed by this Court. Such an approach reflects a clear misconception of the scope of the provision. Discharge of a surety neither dilutes nor modifies the order granting bail or suspension of sentence. Rather, it merely relieves the surety from the obligation voluntarily undertaken by him while preserving the accused's entitlement to remain on bail, subject to furnishing fresh sureties in accordance with law. The statutory right available to a surety under Section 489 of BNSS cannot be defeated merely because the order granting bail or suspending sentence was passed by a superior Court. The obligation of the Magistrate, once an application for discharge is moved, is to act in accordance with the procedure mandated by the statute and not to reject the request on a jurisdictional misconception. In this regard, this Court places reliance upon the authority cited as ***Raghubir Singh vs. State of Bihar : 1986 (4) SCC 481***, wherein it was observed as under:

“20. The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the proviso to Section 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of Chapter 33 of the Code for the purposes of that chapter. That is provided by the proviso to Section 167(2) itself. This means, first, the provisions relating to bonds and sureties are attracted. Section 441 provides for the execution of bonds, with or without sureties, by persons ordered to be released on bail. One of the provisions relating to bonds is Section 445

which enables the Court to accept the deposit of a sum of money in lieu of execution of a bond by the person required to execute it with or without sureties. If the bond is executed (or the deposit of cash is accepted), the Court admitting an accused person to bail is required by Section 442(1) to issue an order of release to the officer in charge of the jail in which such accused person is incarcerated. Sections 441 and 442, to borrow the language of the Civil Procedure Code, are in the nature of provisions for the execution of orders for the release on bail of accused persons. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the Court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightway. Orders for release on bail are effective until an order is made under Section 437(5) or Section 439(2). These two provisions enable the Magistrate who has released an accused on bail or the Court of Session or the High Court to direct the arrest of the person released on bail and to commit him to custody. The two provisions deal with what is known in ordinary parlance as cancellation of bail. Since release on bail under the proviso to Section 167(2) is deemed to be released on bail under the provisions of Chapter XXXIII, an order for release under the proviso to Section 167(2) is also subject to the provisions of Sections 437(5) and 439(2) and may be extinguished by an order under either of these

provisions. It may happen that a person who has been accepted as a surety may later desire not to continue as a surety. Section 444 enables such a person, at any time, to apply to a Magistrate to discharge a bond either wholly or so far as it relates to the surety. On such an application being made, the Magistrate is required to issue a warrant of arrest directing the person released on bail to be brought before him. On the appearance of such person or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as it relates to the surety, and shall call upon such person to find other sufficient surety and if he fails to do so, he may commit him to jail. (Section 444). On the discharge of the bond, the responsibility of the surety ceases and the accused person is put back in the position where he was immediately before the execution of the bond. The order for release on bail is not extinguished and is not to be defeated by the discharge of the surety and the inability of the accused to straightway produce a fresh surety. The accused person may yet take advantage of the order for release on bail by producing a fresh, acceptable surety.”

12. Reliance can also be placed upon the authorities rendered in *Ritesh*’s case (supra) and *Pradeep Kumar Das vs. State of Odisha*, CrI. Appeal No. 286 of 2003, decided on 13.07.2023, wherein similar observations have been made.

13. In view of the above discussion and the law noticed hereinabove, the present petition is allowed. The impugned order dated 02.05.2026 (Annexure P-6), passed by the learned Chief Judicial Magistrate, Fatehabad, is hereby set aside. The matter is remitted to the learned Chief Judicial Magistrate, Fatehabad, who shall proceed with the application filed by the petitioners strictly in accordance with the procedure prescribed under Section

489 of BNSS. The learned Chief Judicial Magistrate shall secure the presence of the accused in the manner as prescribed in law and, upon his appearance, discharge the petitioners from their obligations as sureties and afford the accused an opportunity to furnish fresh and sufficient sureties. It is made clear that in the event the accused fails to furnish fresh sureties, the learned Chief Judicial Magistrate shall proceed further in accordance with law.

03.07.2026

Wassem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No