ORDER SHEET

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Rev. Appl. No. S- 204 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE

15.02.2016

For Katcha Peshi

Mr. Ayatullah Khowaja, Advocate for Applicant
Mr. Shahzado Saleem Nahiyoon, A.P.G.

Case of the applicant is that he stood surety for accused namely Qamar Riaz in Cr. Case No. 84 of 2014 emanating from Crime No. 13 of 2014 under Section 279, 320, 427 PPC at police station Taluka Mirpurkhas in terms of order dated 16.4.2014. The accused after release jumped off the bail on 22.11.2014. On 17.12.2014 N.B.Ws were issued against him, surety was forfeited and notice was issued to the applicant. His counsel appeared on 11.7.2015 and thereafter the matter went on till 18.11.2015 when the applicant was directed by the trial court to deposit the entire surety amount.

His counsel has argued that the applicant was not afforded a proper opportunity to explain his position. His view is that the amount of surety was forfeited before giving notice to the applicant; therefore, such order is illegal ab initio. He states that first the applicant should have been given notice under Section 514 Cr.P.C. for providing an opportunity to him to produce the accused and only after his failure, the court ought to have passed the order. He has lastly prayed for taking a lenient view.

On the other hand learned APG has opposed this application. I have considered the submissions of the parties and perused the record. After grant of bail the accused absconded without intimation on 22.11.2014 hence the surety was forfeited and N.B.Ws were issued against him. The contentions of the applicant's counsel that the order is illegal because the surety was forfeited before issuance of notice to the applicant is not sustainable in the law. Needless to mention that when the accused jumps off the bail

without any intimation, the order of forfeiture of surety has to follow and then an opportunity is to be afforded to the surety to explain his position as to why the amount of surety so forfeited should not be recovered from him and in case he satisfies the court the circumstances which justify recalling of the order or taking a lenient view, the court could take into consideration such facts and accordingly can pass order. The applicant/surety cannot take a ground that he was given notice afterwards and the surety was forfeited earlier. Forfeiture of surety bond does not mean that the amount of surety has to be deposited forthwith. As observed above, if he produces the accused after notice and or pleads other ground justifying recalling the order, it can be done by the trial court. Record reflects that the applicant's counsel appeared on 11.7.2015 in response to notice and then he was continuously afforded opportunities by the Trial Court to explain his position but he failed to furnish any explanation. Admittedly the accused is still absconder. The responsibility of the applicant became absolute when he furnished surety on his behalf and gave personal bond undertaking his responsibility to produce the accused on each and every date of hearing. In regard to the contention of the counsel that a lenient view be taken, the record does not reflect any efforts made by the applicant to procure attendance of the accused. The accused is still absconder and the applicant has utterly failed in his duties to produce him before the trial court. In my view no case for taking a lenient view either is made out. Under the circumstances I dismiss this application.

JUDGE

*Karar/-