

ORDER SHEET  
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA  
Crl. Misc. Application No. S- 152 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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For Hearing of main case.

19.09.2019

Mr. Zafar Ali Malgani, Advocate for the applicant.

Mr. Muhammad Noonari, D.P.G for the State.

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Through this application the applicant/surety has called in question the order dated 05.07.2019 passed by learned V-Additional Sessions Judge, Larkana whereby the application of the surety to return the surety was declined. Relevant portion of the order is reproduced as under:-

*"Perusal of record shows that Mst. Saba was granted bail after arrest by the court of learned 3<sup>rd</sup> Additional Sessions Judge, Larkana vide order dated 05.11.2016 subject to furnishing solvent surety in the sum of Rs.100000/-. Perusal of record shows that Mehboob Ali stood surety of accused Mst. Saba and same surety was accepted by this Court vide order dated 20.12.2016. Perusal of record shows that this Court kept the case of the accused Mst. Saba in abeyance vide order dated 20.06.2018, wherein it has been held that "the sureties of the accused be bound down for the period of two years and thereafter accused shall remain on bail on their own P.R bonds. "*

Learned counsel, during the course of arguments, submitted that learned Additional Sessions Judge, while passing the impugned order has failed to consider that the matter was kept in abeyance on account of non appearance of the prosecution witnesses and not on account of any slackness on the part of the applicant/surety as such the surety is not liable to suffer. He further submits that the impugned order has been passed without application of judicial mind as such the same is not sustainable in law and liable to be set aside.

Learned D.P.G submits that the order passed by learned Additional Sessions Judge, is speaking one and does not warrant interference by this

*[Signature]*

Court in the present proceedings and as such he supports the order impugned and seeks dismissal of the present application.

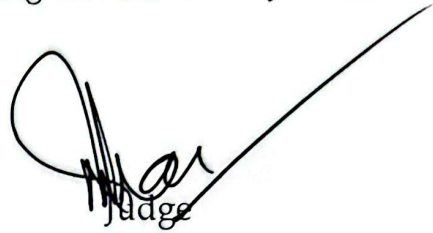
From the record it appears that the learned Additional Sessions Judge while disposing off the application under section 265-K, Cr.P.C filed by the accused Mst. Saba, Khan and Munawar Ali for their acquittal passed the order dated 20.06.2018, relevant portion whereof is reproduced as under:-

*"I have heard learned defense counsel and learned ADPP for the State so also perused the material available on the record, from which, it appears that in this case, hectic efforts have been made to ensure the attendance of the complainant and private PWs and all necessary formalities have been completed, but they have failed to appear before this court, as such, they are not interested in their case and it is duty of the prosecution to produce them but failure. Since this is a murder case and there remains evidence of complainant and eye witnesses, therefore at this stage prayer of learned counsel for accused for their acquittal is not justified, thus, I dismiss both applications u/s 265-K, Cr.P.C. However, it will be futile exercise and wastage of time of the court to proceed further with the case, thus at this stage, in the interest of justice, I keep this case against accused Mst. Saba Khan and Munawar Ali in abeyance till appearance of the complainant and PWs named above. They are already on bail, they are released and will remain on same sureties and discharged till appearance of the complainant and PWs named above. Their sureties shall be bound for the period of two years and thereafter accused shall remain on bail on their own P.R bonds. Needless to mention that prosecution and complainant are at liberty to apply for reopening of the case as and when they ensure attendance of remaining all private PWs."*

After the above order, the applicant/surety moved application under section 502, Cr.P.C for return of surety papers which was dismissed by the learned Additional Sessions Judge, vide order dated 05.07.2019 impugned in the present proceedings. The record further reflects that neither the applicant nor the surety has challenged the above said order dated 20.06.2019 whereby the matter emanating from crime No.30/2016 for offence under section 302, 337-J, 120-B, 34, PPC was kept in abeyance and the surety was bound for a period of two years. In presence of above said order, application for return of surety prior to the period of two years is nothing but pre-mature effort. In

*[Handwritten signature]*

view of above, the order impugned passed by the learned Additional Sessions Judge is just and speaking one and does not call for any interference by this Court. Learned counsel for the applicant has failed to raise any plausible ground and or illegality and irregularity in the impugned order. Accordingly, this criminal misc. application being devoid of any merit is dismissed.

  
Judge

Abid H. Qazi/™