IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-108 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For Katcha Peshi.
2. For hearing of MA 4066/15

25.05.2017.

Ms. Fareeda Naz, Advocate for applicant.
Mr. Shahid Ahmed Shaikh, A.P.G.

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O R D E R

ABDUL MAALIK GADDI, J. This order shall dispose of Criminal Revision Application No.S-108 of 2015 filed by applicant Ghulam Ali Khaskheli, whereby order dated 27.04.2015 passed by learned Sessions Judge, Shaheed Benazirabad has been called in question as the applicant was penalized in the sum of Rs.200000/-each for standing surety of accused Wali Muhammad and Saeed in case registered under Section 302, 114, 34 PPC vide F.I.R. No.21 of 20147 of P.S Sinjhoro.

2. The facts in brief appear to be that applicant stood surety for accused Wali Muhammad and Saeed and executed such bond in the sum of Rs.300000/- for each accused and P.R Bond in the like amount before the learned Trial Court. However, after having released on bail, the said accused remained absent and the surety/applicant was asked to produce the said accused. Since the surety/applicant failed to produce the accused in Court, therefore, he was given notice under Section 514, Cr.P.C. Ultimately, vide impugned order he was burdened to pay a sum of Rs.200000/- each for both accused (total Rs.400000/-) instead of Rs.300000/- each accused (total 600000/-) to be deposited within a period of one month with the Nazir of the Trial Court. In default the amount shall be recovered through coercive measures.

3. Learned Counsel for applicant maintained that impugned order is harsh and financial condition of the applicant has not been taken into consideration while imposing penalty; that applicant stood surety for accused Wali Muhammad and Saeed out of benevolence without any monetary gain; that imposition of penalty was improper, unjust and unreasonable; that no inquiry was conducted to ascertain if the applicant had any direct interest with the accused, and that while imposing penalty, balance should have been made between undue leniency and undue severity which was not made; that impugned order has been passed without forfeiture of the surety

bond, therefore, under the circumstances, learned Counsel for the applicant has prayed for setting aside of the impugned order by allowing this application and remanding the case to the Trial Court with direction to decide the application of the applicant after hearing him in accordance with law. In support of her arguments she has relied upon the case of NASEER MUHAMMAD v. The State (1996 P.Cr.L.J 860).

4. Conversely, learned Assistant Prosecutor General opposed the application and contended that the learned Trial Court has passed the impugned order after hearing the surety while taking a lenient view in the matter by reducing the amount of surety bond from Rs.300000/- each for both accused (total Rs.600000/-) to Rs.200000/-each (total Rs.400000/-) to be deposited before the Nazir of Trial Court within one month. He further submits that sufficient opportunities were given to the surety/applicant to produce the accused before the Trial Court, who were involved in a murder case but he failed to do so.

5. Having heard the submissions of learned Counsel for the parties, I find that for whatever reason the applicant had become surety; he was under legal obligation to discharge his liability under the bail bond furnished by him. After undertaking the liability himself, it does not lie in his mouth to say that on account of his financial condition he cannot pay the amount of bond executed by him and stood surety of the accused of his benevolence and without any monetary gain. There is no legal embargo that the amount of bail bond in full cannot be forfeited. In case where an accused jumps bail bond the entire surety amount becomes liable to confiscation. The surety is liable to produce the accused in Court in view of his undertaking at the time of furnishing surety on each and every date of hearing and in case he fails to produce the accused he would be liable to be penalized. But, in this case as mentioned in the impugned order the surety has failed to produce the accused persons before the Trial Court, therefore, learned Trial Judge was justified in imposing the penalty after observing all legal formalities.

6. In the case of ZEESHAN KAZMI v. THE STATE (PLD 1997 SC 267) it was held as under:-

> *"Once an accused person jumps bail bond, entire surety amount become liable to be forfeited in the absence of any mitigating circumstances. Courts in view of bleak scenario which has emerged, with the passage of time on account of the lack of respect of the rule of law, and because of the unprecedent continuous steep inflationary tendency resulting in the loss of money value, should not show any leniency while forfeiting bail bond amount. Approach of Courts should be dynamic and progressive-oriented with the desire to discourage the accused persons to jump bail bond."*

7. In another case reported as Ghulam Dastagir and 3 others v. The State (PLD 2011 Supreme Court 116), it has been observed as under:-

> "*11. The present law and order situation prevailing in the Country and the deterioration of the moral values in the society in the past 3/4 decades requires that provisions of section 514, Cr.P.C should not only be adhered to strictly but in case of non appearance of the accused, a surety should be held liable for forfeiture of full amount of its bond for the reason that moral values of our society as were in the sixties are different today."*

8. In the case in hand, learned Trial Court has already taken lenient view by reducing the amount of surety bond from Rs.300000/- each for both accused (total Rs.600000/-) to Rs.200000/-each (total Rs.400000/-) to be deposited before the Nazir of Trial Court within one month. The impugned order has been passed on 27.04.2015 since then the surety has not deposited the reduced amount of surety bond despite expiry of two years. This aspect of the matter also shows malafide on the part of the surety.

9. In view of the above, I see no good reason to further reduce the amount of surety bond. The impugned order is correct, proper and legal and does not call any interference by this Court in its revisional jurisdiction.

10. This Criminal Revision Application fails, which is hereby dismissed alongwith listed application.

11. Copy of this order be sent to the learned Sessions Judge, Shaheed Benazirabad immediately, with direction to recover the reduced surety amount from the surety after adopting all legal process.

JUDGE

Ali Haider