

*ORDER SHEET*

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.

**Cr. J. Appeal No. D — 63 of 2005.**

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DATE	ORDER WITH SIGNATURE OF JUDGE
<u>29.05.2017.</u>	

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FOR REGULAR HEARING

Appellant Muhammad Zafar Ali is called absent.

Syed Meeral Shah Bukhari, Addl. P.G. for the State.

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Appellant Muhammad Zafar Ali was tried by learned Special Judge CNS Hyderabad, in Special Case No.57 of 2000, for offence under section 9(b) Control of Narcotic Substance Act 1997. By Judgment dated 12<sup>th</sup> April 2015, appellant was convicted under section 9(b) Control of Narcotic Substance Act 1997, and sentenced to 02 years R.I. and to pay the fine of Rs.20,000/-. In case of default in payment of fine he was ordered to suffer R.I. for 02 months more.

Appellant preferred instant appeal bearing Criminal Appeal No.D-63 of 2005 on 18.04.2015, through Superintendent Central Prison Hyderabad.

Mr. Nandan A. Kella, Advocate filed Power on behalf of the appellant. Appeal was admitted to the regular hearing. During the pendency of the appeal, appellant applied for suspension of sentence under section 426 Cr.P.C. and this Court suspended his sentence vide order dated 01.06.2005, as a result of which, the appellant was released on bail but after release from Jail he never appeared before this Court. In the first instance, notices were ordered to be issued against appellant and his surety but they didn't appear. Thereafter, N.B.W. was also issued against the appellant but the same were returned un-executed.

This court vide order dated 18.09.2013 observed that despite issuance of the show cause notices, the surety has not effected

appearance as the address provided by the surety while furnishing surety was not correct. Therefore, this Court had no option but to order the amount of the surety be forfeited and deposited in the relevant head of account with the provincial exchequer and perpetual N.B.Ws were ordered to be issued against the appellant Mohammad Zafar Ali.

Today Mr. Nandan A. Kella, advocate for the appellant is called absent.

Learned A.P.G. submits that appellant has become fugitive from the law and prayed for dismissal of the appeal. In support of his submissions he has relied upon the case reported as **Ikramullah v. State** (2015 SCMR 1002).

From the perusal of the record it transpired that after suspension of the sentence by order dated 01.06.2005, the appellant never appeared. His surety had also furnished false address and bail bond has already been forfeited. N.B.Ws were issued against the appellant which also returned unexecuted. We agree with learned A.P.G. that there is sufficient material on the record that accused has become fugitive from the law. The law is settled by now that a fugitive from the law loses his right of audience before a court, as held by Honourable Supreme Court in the case of **Ikramullah v. State** (2015 SCMR 1002), relevant portion of the same is reproduced as under:-

**“A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15-4-2012 and he has become a fugitive from law eversince. The law is settled by now that a fugitive from law loses his right of audience before a court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.”**

In the view of above circumstances, it appears that appellant has become fugitive from the law after release on bail as a result of suspension of his sentence. The appeal is, therefore, dismissed on

account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the concerned police or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

Needless to mention that action against the surety shall be continued in terms of the order dated 18.09.2013.

JUDGE

JUDGE

A.