

ORDER SHEET

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No. D – 5075 of 2014

| | |
|------|-------------------------------|
| Date | Order with signature of Judge |
|------|-------------------------------|

Priority:

1. For hearing of CMA No.11915 of 2015/
2. For hearing of CMA No.25191 of 2014.
3. For hearing of main case.

<><><><><><>

14.12.2018.

Mr. Qamar Riaz, Advocate for the Petitioner.
Mr. Mukesh Kumar Karara, Assistant Attorney General.
Chaudhary Rafiq Rajouri, AAG.

<><><><><><>

Shamsuddin Abbasi, J:- Impugned in this petition is the order dated 18.08.2014 passed by the learned Special Judge {Offences in Banks} in Case No.36 of 1998, arising out of FIR No.26 of 1997 and Case No.56 of 1998, arising out of FIR No.15 of 1998 registered at Police Station FIA/CBC, Karachi, whereby the surety bond furnished by the petitioner was forfeited with direction to deposit surety amount on next date of hearing, otherwise appropriate orders would be passed.

2. The facts giving rise to this petition, briefly stated, are that accused Fareed Anwar was facing trial before Special Court {Offences in Banks}, Sindh, Karachi, in Case No.36 of 1998, arising out of FIR No.26 of 1997 and Case No.56 of 1998, arising out of FIR No.15 of 1998 registered at Police Station FIA/CBC, Karachi. By an order dated 27.08.1998 he was granted bail in the sum of Rs.4,00,000/- {Rupees four lac only} and Rs.19,00,000/- {Rupees nineteen lac only} respectively. The petitioner voluntarily appeared and stood surety by depositing title documents of House No.107/6, Sector 5-D, New Karachi, Karachi, and in consequence whereof the accused Fareed Anwar was released from jail, however, he chose to remain absent from 11.04.2013 and in result thereof NBWs were issued against him and notice to petitioner being his surety under Section 514, Cr.P.C. On affecting service of the notice, the petitioner

appeared before the trial Court on 18.09.2013. He, however, filed reply to notice under Section 514, Cr.P.C. but failed to produce the accused in Court despite of repeated opportunities as such the learned trial Court forfeited the surety bond by impugned order dated 18.08.2014 directing the petitioner to deposit the surety amount on next date of hearing. Feeling aggrieved by the said order, the petitioner has filed this petition.

3. Learned counsel for the petitioner submits that the petitioner stood surety on the request of uncle of accused Fareed Anwar only on humanitarian grounds; that he is a respectable and law abiding citizen and tried his level best to produce accused in Court but to no result; that by profession he is a cook and sole supporter of a large family as such unable to pay the full amount of bail bond. Learned counsel, in view of his submissions, has asked for a lenient action and at the same time make a request for deposit of 10% of the forfeited bond.

4. In contra, the learned Assistant Attorney General has defended the impugned order by submitting that the petitioner/surety was responsible to produce the accused on each and every date of hearing but he failed to discharge his liability, hence does not deserve any leniency and the learned trial Court has rightly forfeited the surety bond.

5. We have given anxious consideration to the submissions of learned counsel for the petitioner and the learned Assistant Attorney General as well as perused the entire available material with their able assistance.

6. It is an undisputed fact that the petitioner voluntarily appeared and stood surety for accused Fareed Anwar in two cases, referred herein above, in the sum of Rs.4,00,000/- {Rupees four lac only} and Rs.19,00,000/- {Rupees nineteen lac only} respectively and executed an indemnity bond in the like amount to the effect that he would produce the accused on each and every date of hearing and failure thereof the entire amount of bond would be forfeited. Record reflects that accused Fareed Anwar jumped bail on 11.04.2013 and

the petitioner in response to the service of notice under Section 514, Cr.P.C. upon him appeared before the trial Court on 18.09.2013 and sought time for production of accused, his request was allowed and the matter was adjourned to 14.10.2013. On that date also the petitioner failed to produce the accused and asked for further time which request too was allowed and the matter was adjourned to 19.11.2013. Again on that date the petitioner failed to produce the accused but filed reply to notice under Section 514, Cr.P.C. and the matter was posted for 16.12.2013. On that date the counsel for the petitioner was present but failed to argue and the matter was again adjourned to 10.01.2014 on which date the petitioner was absent but his counsel was present and sought adjournment and the matter was adjourned to 13.02.2014. Same was the position on 13.02.2014, 18.03.2014 and 29.04.2014. On 17.06.2014 the petitioner and his counsel remained absent and the matter was adjourned to 18.08.2014 on which date too both were absent and in consequence whereof the learned trial Court was left with no other alternative but to pass order for forfeiture of surety bond. This position clearly reflects that the learned trial Court granted ample opportunities to the petitioner for production of accused and kept the matter pending for about 11 months despite of that the petitioner failed to discharge his obligation of producing the accused in Court. We have taken guidance from the case of *Ghulam Dastagir & 3 others v The State* {PLD 2011 SC 116} wherein it has been held as under:-

“11. The case-law relied upon by the learned counsel for the petitioner is not applicable on facts of the present case. 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 bonds for the reason that moral values of our society as were in the sixties are different today.

In another case of *Saeed Akhtar v The State* {2009 SCMR 834}, the Hon'ble Supreme Court held that:-

“Keeping in view the special statutes prescribing the above 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 unprecedented continuous steep inflationary tendency resulting in the loss of money value,

the Courts should not show any undue leniency while forfeiting bail bond amount. Their approach should be dynamic and progressive-oriented with the desire to discourage the accused persons to jump bail bonds. There is no legal requirement that full bail bond amount should not be forfeited, on the contrary, once an accused person jumps bail bond, the entire surety amount becomes liable to be forfeited in the absence of any mitigating circumstances”.

In the case of *Muhammad Safeer v Faqir Khan & 2 others* {2000 SCMR 312}, it has been held as follows:-

“the reduction of the amount of the bail bond was not in consonance with law. The forfeiture should have been to the extent of the full amount of the bond. When confronted with the aforesaid judgments, the learned counsel confined his arguments to the effect that the petitioner has already suffered simple imprisonment for two months and therefore, a lenient view should be taken. Be that as it may, we are bound by the judgments delivered by this Court referred to hereinbefore.

7. For the foregoing reasons and placing reliance on the above case law, we are of the considered view that no case of leniency is made out and the learned trial Court has rightly forfeited the full bail bond amount by impugned order dated 18.08.2014, which calls for no interference.

8. The petition in hand stands dismissed in the foregoing terms.

JUDGE

JUDGE

Naeem