

JUDGMENT SHEET

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

Cr. Appeal No. D — 228 of 2009.

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Muhammad Karim Khan Agha.

01.06.2017.

Appellant Asghar Ali is called absent.

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

Naimatullah Phulpoto, J.- Appellant Asghar Ali was tried by learned Special Judge for CNS Sanghar, in Special Case No.15 of 2009, for offence under section 9(b) Control of Narcotic Substance Act 1997. By Judgment dated 30th September 2009, appellant was convicted under section 9(b) Control of Narcotic Substance Act 1997, and sentenced to 01 years R.I. and to pay the fine of Rs.2000/-. In case of default in payment of fine he was ordered to suffer R.I. for 01 month more.

Appellant preferred instant appeal. Appeal was admitted for 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 18.11.2009, as a result of which, the appellant was released on bail. After release from Jail, he never appeared before this Court. In the first instance, this Court vide order dated 03.09.2013 issued bailable warrants against appellant and notice to his surety but they didn't appear. Thereafter, N.B.W was issued through S.H.O. P.S. Tando Adam against the accused. The S.H.O. Police Station Tando Adam City in his endorsement dated 29.04.2017 has reported that appellant is absconder in Crime No.27 of 2017, registered at Police Station Tando Adam City under section 353, 506(2), 147, 148, 149 PPC and he was concealing from his arrest. It appears that after suspension of the sentence vide order dated 18.11.2009, the applicant has never appeared to pursue the appeal.

Surety submitted application for withdrawal of his liability. This Court vide order dated 24.10.2016, disallowed such application.

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 18.11.2009, the appellant never appeared. 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 ever since. 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 24.10.2016.

JUDGE

JUDGE

A.