

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No.663 of 2023

Date

Order with signature of Judge

1. For hearing of main case
2. For hearing of M.A No. 10573/2023.

21.11.2023

Mr. Zakir Hussain Khaskheli advocate for the applicant
Mr. Muntazir Mehdi, Additional PG along with ASI Abdul Samad of PS
Mauripur

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant/surety Noor Muhammad Ali has assailed the legality of the order dated 07.08.2023 passed by the learned VII-Additional District & Sessions Judge Karachi West in Criminal Revision Application No.33/2023 under Section 435, 439 & 439-A Cr. P.C., whereby his application for returning surety papers was rejected and surety forfeited throughout the proceedings, on the premise that he failed to produce the accused before the trial court, who absconded away in crime No.563 of 2010 under section 489-F PPC of Police Station Mauripure, an excerpt of the order dated 07.08.2023 is reproduced as under:-

“ I have given my anxious consideration to the arguments advanced by the applicant/surety, learned DDPP for state and perused the record. According to the record accused Abdul Waheed son of Abdul Hafeez has been declared absconder in the above-referred crime and the surety amount was forfeited by the learned trial Court. perusal of further records shows that the applicant/surety filed first application for the return of surety document which was allowed at one hand, subject to deposit amount of Rs., 10,000/- is fixed as a penalty, and on the other hand surety papers hereby ordered to return to the Nazarat branch in one and same order dated 25.02.2012. Thereafter the applicant through his advocate filed another application dated 05.01.2023, which was dismissed by the learned Judge and stating therein “since the learned predecessor has already passed on order under Section 514 Cr. P.C, dated 25.02.2012, hence the undersigned is unable and not legally empowered to pass any fresh order. Application stands dismissed”. The surety/applicant has preferred Criminal Revision before this Court wherein order dated 25.2.2012 was set aside only to the extent of penalty amount and trial Court was directed to pass order as per law after fresh hearing. Hence learned trial Court has passed instant fresh order on 26.05.2023, this Court has perused the order passed by learned 1st Civil Judge & Judicial Magistrate Karachi West dated 26.05.2023, which is passed after a fresh hearing as per jurisdiction and on the basis of guidelines given by our Superior Court, as per law. Therefore, this Court finds no merits in this revision application, I am of the view that no illegality, irregularity has been committed by the trial Court while passing the impugned order and in accordance with law and it does not call for any interference by this Court.

In view of what has been discussed above, I hereby dismiss the criminal revision. Let the copy of this order be communicated to the Court of 1st Judicial Magistrate Karachi West.”

2. The main contention of the applicant is that the applicant cannot be held responsible and his surety papers were not liable to be forfeited in favor of the State. He submitted that section 514, of the Criminal Procedure Code contemplates that the final decision, regarding recovery of the amount of the bond that has been forfeited, should be made after the issue of notice to show cause why the amount should not be paid. Where show-cause notice is issued but without such show-cause notice being duly served, an order for recovery is made, such an order is not only contrary to the wholesome provisions of section 514, Cr. P. C. but is also in violation of the principle of natural justice contained in the Latin maxim: 'audi alteram partem' which stems from the principle of Islamic Law and prayed for a direction to the learned trial Court to return the surety papers to him as the impugned order dated 25.02.2012 has already been set aside to the extent of penalty amount and fresh direction was given to the learned trial Court to pass afresh order after hearing the parties.

3. Learned APG argued that the accused remained absent in trial Court and notice under section 514 Cr. P.C. was issued upon the surety and it was served. It has also been argued by learned APG that proper procedure as contained in section 514 Cr. P.C. has been adopted in this case.

4. I have heard learned counsel for the parties and have also perused the material available on record.

5. To properly appreciate the arguments of learned counsel for the parties section 514 Cr. P.C is reproduced as under:

“514. The procedure of forfeiture bond. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the first class,

or when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any movable property belonging to such person without such limits when endorsed by the [District Officer (Revenue)] within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 107 or section 118.....is convicted of an offence the commission of which constitutes a breach of the conditions of this bond, or of a bond executed in lieu of his bond under section 514-B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety, or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”`

6. It appears from the record that the trial Court issued a show cause notice to the applicant under Section 514 Cr. P.C as to why the surety amount should not be forfeited on the premise that bail was granted to the accused in FIR No. 563 of 2010 for the offense under Section 489-F PPC of PSMAuripur in the sum of Rs. 8,96,000/- and the applicant stood surety on his behalf and deposited the registered sale deed of Plot No. R-32 Barkat-Madina town Bharia Colony Landhi Karachi, after the grant of bail the accused Abdul Waheed jumped out the bail and failed to appear before the trial Court with effect from 14.06.2011 and finally the learned trial Court vide order dated 25.02.2012 imposed a penalty of Rs. 10,000/- and ordered to return the surety papers to him subject to deposit the sum of penalty 8,96,000/- in Nazarat branch of the learned trial Court. Later on, the trial Court also passed the order dated 02.05.2023 whereby the full amount of bail bond in the sum of Rs. 8,96,000/- was forfeited with direction to deposit with the Nazir of District Court and then surety papers could be returned to the applicant. The applicant being aggrieved by and dissatisfied with the aforesaid order preferred Criminal Revision Application No. 33 of 2023 before the revisional Court with the prayer to set aside the impugned order, however, the learned revisional Court dismissed the application vide order dated 07.08.2023.

7. It is very clear that the trial Court has adopted the procedure as provided under section 514 Cr.P.C. As regards to contentions of learned defence counsel the entire surety amount has been forfeited and no lenient view has been taken by the trial Court. On this point, the Supreme Court of Pakistan in the case of *Saeed Akhtar v. The State* (2009 SCMR 834) has been pleased to observe as under;

“It has been held by this Court on various occasions that no lenient view should be taken and the entire amount of the bail

bond should be recovered as an amount of penalty. In this regard reference may be made to *Zeeshan Kazmi v. The State* PLD 1997 Sc 267, it was observed:--

“It has now become common that the accused persons involved in heinous offences, if succeed, in obtaining bail, jump the bail bonds. To check the above tendency and to provide a deterrent special provisions have been enacted and/or are being enacted in the special statutes prescribing the minimum amount of bail bondKeeping in view the above bleak scenario which has emerged, with the passage of time on account of the lack of respect for 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 from jumping 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...

For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave refused.”

8. Once an accused person jumps bail bond, the entire surety amount becomes liable to be forfeited in the absence of any mitigating circumstances. In this case, surety has not brought any mitigating circumstances. The approach of the trial Court appears to be dynamic and progressive-oriented with the desire to discourage the accused persons from jumping bail bonds. Order of learned trial Court is based upon sound reasons and does not require interference. The report submitted by the trial Court on 28.11.2023, explicitly shows that the accused being released on bail has failed to appear and proceedings were initiated against him till now neither he appeared nor surety could ensure his presence at the trial Court, compelling him to forfeit the surety amount.

9. For the foregoing reasons I do not find merit in this Criminal Miscellaneous Application which is dismissed accordingly.

JUDGE