

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Misc. Appln. No. S- 50 of 2014.

Date of hearing	Order with signature of Judge
28.04.2014.	

Mr. Muhammad Afzal Jagirani, Advocate for applicant.  
Mrs. Seema Imtiaz, A.P.G.

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Through instant application, applicant Muhammad Uris Channa has assailed Order dated 24<sup>th</sup> January, 2014, passed by learned Sessions Judge Kashmore @ Kandhkot in Sessions case No.497/2012 (re; St. v. Muhammad Uris and others), arisen out of F.I.R No.36/2012 of PS Ghora Ghat, under Sections 398, 324, 337-H (2) P.P.C.

2. Precisely, relevant facts are that applicant being implicated in referred crime, surrendered before District & Sessions Judge, by moving pre arrest bail application, same was confirmed vide Order dated 12.11.2013, whereafter he was regularly attending the trial Court, while on 24.01.2014, applicant failed to appear before the trial Court thereby trial Court issued NBW through impugned order against applicant as well as notice to his surety.

3. Learned counsel for applicant inter-alia, contended that applicant was regularly attending the trial Court but due to ailment on the date of hearing viz. 24.1.2014, he did not appear; on account of that the trial Court issued NBW; absence of the applicant was not deliberate nor wilful, though such intimation was given by his counsel, inspite of that trial Court issued NBW straightaway; since the applicant was granted bail on merits, therefore, at first instance issuance of NBW are unwarranted under the law and same may be recalled.

4. Conversely, learned A.P.G. does not controvert above position and further conceded that impugned Order dated 24.1.2014, is not sustainable under the law, hence same may be recalled.

5. Heard counsel and perused the record.



6. While scanning the available record, it is reflected that by Order dated 12.11.2013, applicant was granted pre arrest bail on merits; further diary dated 24.1.2014, reveals that due to absence of applicant on that hearing NBW was issued against him, so also notice was issued to the surety. It would be pertinent to mention here that candidly applicant was on bail and he remained absent only on one hearing, though intimation regarding his ailment is pleaded.

7. It is worth to mention here that, Courts are under legal obligation to take lenient view when accused are enjoying bail on merits and at first instance they shall not pass any adverse order unless it is surfaced that accused persons have misused concession of bail granted by them. It is matter of record that <sup>2 Justified</sup> no reasons were assigned by the trial Court, whereby NBW was ordered to be issued against applicant; hence it is pertinent to mention that impugned order is not sustainable under the law. Besides, when intimation regarding absence of the applicant was given to the trial Court on the same date, trial Court was under legal obligation to condone his absence. Judicial propriety demands that such course cannot be encouraged and it is unwarranted under the law, hence trial Court was not expected to pass such hasty order without any justification, when patently applicant was on bail.

8. Keeping in view, the given circumstances the impugned order is not maintainable under the law. Consequently, vide short Order dated 28.4.2014, impugned order was set aside and the applicant was ordered to remain on same surety.

Judge

Ansari/\*