



Special Court on 18.2.2015 showing the petitioner in judicial custody. The petitioner then filed an application seeking post arrest bail in above crime and offences which was decided in his favour vide order dated 10.3.2015 by the Special Court; and he was granted bail subject to furnishing a solvent surety in the sum of Rs.506 million with P.R. bond in the like amount in view of Section 5(7) of Offences in Respect of Banks (Special Courts) Ordinance, 1984 (hereinafter referred as the Ordinance, 1984).

3. The petitioner could not arrange that surety amount and filed an application for reduction thereof before the Special Court but, the learned counsel informed, the same was not entertained. Finding no other adequate remedy the petitioner has filed the instant petition.

4. Mr. Abdul Sattar Pirzada, learned counsel for the petitioner in support of this petition has argued that petitioner has not been able to arrange for such high and exorbitant amount of surety for about last one month; and resultantly he is languishing in jail. He has next contended the fixation of surety amount shall not be so high to amount penalizing the accused and depriving him of concession of bail which otherwise has been granted to him on merits. He has prayed lastly for reduction in surety amount by emphasizing that the petitioner is not the only accused in the FIR but with him there are six other co-accused who are also Directors of the company, hence responsibility, if any, would

be shared equally by all of them. In support of his arguments he has relied upon the 2004 Cr.L.J 583 (Irfan Jabbar versus the State).

5. Mr. Ashfaq Rafiq Janjua, standing counsel has opposed the instant petition on the ground that the order passed by the learned Special Court is in letter and spirit of the provisions of the Ordinance, 1984 that cannot be disturbed.

6. We have heard the learned counsel for the parties and perused the material available on record. The guidance which we have respectfully taken from the case law relied upon by the learned defense counsel has led us to a firm view that an accused cannot be penalized on account of fixation of an amount as surety for his bail which is difficult for him to arrange as it would amount to denial of bail to him, notwithstanding he is granted bail on merits of the case. The relevant observations maintained by this Court in para No.10 of the above referred case while examining Section 5(6) and (7) of the Ordinance 1984 are reproduced herewith for ready reference.

10. "It may be added that a strict literal construction of the provision relating to the minimum amount of bail might possibly render the provision unconstitutional as being repugnant to Article 25 of the Constitution. It is well-recognized by now that Article 25 contemplates genuine and real equality of citizens under the law. Indeed treatment of all citizens by the same yardstick

irrespective of their conditions and circumstances might lead to promotion of inequality in the real sense. When the law requires that bail is to be granted or refused to an accused person by a Court taking into consideration certain factor, stipulation practically denying the right to secure his liberty to one who is unable to furnish surety in a very high amount would amount to promotion of inequality amongst the poor and the affluent. The Supreme Court of India in Pradeep Jain v. Union of India (AIR 1984 SC 1420) observed in the words that those who are unequal in fact cannot be treated by identical stand and it was necessary to take into account de facto inequalities and take affirmative action for the benefit of the disadvantage the object being to eliminate inequality and to promote equality of opportunities to all. It was further observed that equality in law must produce real equality. The above view was upheld by the majority of our own Supreme Court in Atiya Bibi Khan v. Federation of Pakistan (2001 SCMR 1161) holding that where actual inequality existing the State must resort to compensatory State action”.

7. Admittedly the petitioner’s case for the purpose of granting him bail on merits was found in affirmative by the Special Court and he was granted bail in terms of impugned order, however subject to furnishing a solvent surety for the amount which is exactly the same specified in the charge sheet filed against the petitioner and others. While granting bail to the petitioner, the learned Special Judge in very clear and specific terms has observed that the petitioner is one of the Directors/partners of the company against which the

above stated FIR has been registered. In view of such factual position, whether the present petitioner can be burdened with the entire liability of the amount mentioned in the charge sheet for his release on bail is a question which requires an in-depth scrutiny of the relevant provisions of law much beyond the subject matter of this petition filed only for reduction of surety amount on the basis of dicta laid down by this Court in above referred case. We do not feel any need to enter into such deep examination of the law for the purpose of deciding the instant petition. Suffice it to say that the provisions of section 5(7) of the Ordinance, 1984 cannot be read to have implication of penalizing the accused facing trial before the Special Court. Under no circumstances the Court can remain oblivious to the financial constraints of the accused to arrange for the surety amount for his release on bail. The fact that the petitioner, despite being granted bail in terms of the impugned order dated 10.3.2015, has not been released on bail yet tends to show that so far he has not been able to arrange for that much surety amount. The object of legislature to insert provision of Section 5(6) & (7) could not be none else than to ensure the attendance of the accused during the trial. We are of the view that since there are six other co-accused indicted along with the present petitioner in the FIR against whom the provisional charge sheet has been submitted in the Special Court and some of them, as pointed by the learned counsel have been extended concession of

interim pre-arrest bail by this Court on a much less amount as surety, reduction of surety amount for the petitioner for his release on bail would not be against the scheme of Section 5(7) of the Ordinance, 1984. Under the circumstances, we allow the petition as a result thereof the surety amount of Rs.506 million stipulated in the order dated 15.03.2015 passed by Special Court (Offences in Banks) Sindh at Karachi, is hereby reduced to Rs.70 million. The petitioner shall be released forthwith on furnishing a solvent surety of that amount and P.R bond of same value to the satisfaction of the Special Court.

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