IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No. 345 of 2023

Applicant	:	Through Mr. Iftikhar Ahmed Shah, Advocate alongwith Mr. Muhammad Naeem Awan, Advocate
The State	:	Through Mr. Zahoor Ahmed Shah, Addl. P.G
Date of hearing	:	24.09.2025
Date of announcement	:	03.10.2025

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O R D E R

MUHAMMAD HASAN (AKBER), J.- Through the instant Criminal Misc. Application, the applicant has impugned order dated 15.05.2023 passed by the learned Special Judge Anti-Corruption (Provincial), Karachi, whereby the surety amount of Rs.100,000/- was forfeited.

2. The background of the case as narrated in the memo of application is that the accused Salman Sharif was granted bail against a surety of Rs.100,000 furnished by the applicant. On 18.04.2023, he attended court but left at 1:15 PM due to illness and fasting when the Presiding Officer was absent. The next day, his absence was not condoned, his bail was cancelled, and a notice under Section 514 Cr.P.C. was issued. Despite the applicant's reply, the trial court ordered forfeiture of the entire surety amount.

3. Learned counsel for the applicant contends that the forfeiture order is illegal, arbitrary, and passed in haste without proper application of mind. It ignored that the accused soon obtained pre-arrest bail and appeared before court. The order is claimed to violate fundamental rights under Articles 4, 10-A, 15, and 25 of the Constitution and thus liable to be set aside. Reliance is placed on various case laws.

4. Learned Addl. P.G. supports the impugned order, arguing that the accused breached bail terms by leaving court without permission and the surety was responsible for compliance; The trial Court acted lawfully under Section 514 Cr.P.C. and the applicant has not shown any illegality or irregularity in the order.

5. Heard learned counsel for the applicant and learned Addl. P.G and perused the record. The factual matrix of the case reveals that the default was neither willful nor contumacious. The record indicates that the accused, Salman Sharif, did present himself in Court on the relevant date and remained present until approximately 01:00 PM. His inability to mark attendance was attributable to the unavailability of the Presiding Officer, a circumstance beyond his control. His subsequent departure at 01:15 PM, while perhaps not ideal, was explained by his state of being unwell and observing a fast. Crucially, this was not a case of the accused absconding or showing a blatant disregard for the court's authority. He promptly secured pre-arrest bail from this Court and presented himself before the trial court at the next opportunity, demonstrating his continued intent to abide by the judicial process. In such a scenario, the failure to mark attendance on a single occasion, for the reasons stated, constitutes a technical and venial breach at best. The learned Special Judge's decision to dismiss the application for condonation of absence, cancel the bail and consequently forfeit the entire surety bond was a disproportionately severe response. The law envisions a graduated approach, where the nature of the breach is commensurate with the penalty imposed. A minor breach calls for a minor penalty, not the extreme step of full forfeiture. The power to forfeit a surety bond under Section 514 of the Code of Criminal Procedure, 1898, is indeed discretionary, but such discretion must be exercised judiciously and not arbitrarily or punitively. The objective of taking a surety is to secure the attendance of the accused, not to generate revenue for the state or to inflict a harsh penalty for a minor or explained lapse. The impugned order dated 15.05.2023, whereby the entire surety amount of Rs.100,000/- was forfeited, cannot be sustained in the eyes of the law. The impugned order was passed in a hurried manner, without adequate consideration of the mitigating circumstances and thus amounts to an improper exercise of judicial discretion. It appears that the surety was cancelled harshly and the surety, who stands as a guarantor, is not to be punished severely without there being extraordinary circumstances justifying such a drastic measure. No such

extraordinary circumstances exist in the present case. Therefore, while the trial Court was not entirely unjustified in taking note of the breach, however the punishment of full forfeiture is excessive. Reliance in this regard is placed upon 2018 MLD 1857, 2007 SCMR 575, 1997 SCMR 1387 and 2011 SCMR 929.

Consequently, the application is allowed; and the impugned Order dated 15.05.2023 for forfeiture of Surety amount is set-aside.

J U D G E