

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
Cr. Rev. Appl. No. D-146 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
02.02.2016	

1. For Katcha Peshi
2. For Hearing of MA 6829/15

Mr. Rana Sohail Mehmood, Advocate for applicant
Mr. Shahzado Saleem Nahiyoon, A.P.G.

Applicant stood surety for accused namely Farman Shar in Crime No. 287 of 2011 of Police Station Town Mirpurkhas registered under Section 9(c) CNS Act, 1997.

During trial, the accused jumped off the bail on 3.7.2013. Accordingly notice was issued to the applicant who was his surety; in response to which he submitted an application on 22.10.2013 requesting for time to locate the whereabouts of the accused. Ultimately he intimated the court vide his application dated 4.12.2013 that the accused was behind the bars in some other cases. Accordingly P.O was issued against the accused and after due trial he was acquitted. However, since absence of the accused from 3.7.2013 to 4.12.2013 was unexplained, a notice was issued to the applicant calling upon him to furnish an explanation regarding absence of the accused for the above period. He submitted his reply, that was not found satisfactory and accordingly vide order dated 11.2.2015 a penalty of Rs.25,000/- was imposed upon the applicant with direction to deposit that amount within one month. Applicant has impugned this order in this application.

Learned counsel in support of his application has argued that the applicant had stood surety for accused on humanitarian ground. The applicant is a poor person doing job at some showroom and is hardly earning enough money to cater to the needs of his family.

On the other hand, learned APG has argued that the applicant is not entitled to any leniency as it was his duty to produce the accused on each and every date of hearings and since he failed to produce the accused for a considerable time imposition of entire fine amount, i.e. Rs.25,000/- is justified.

We have heard the counsel for the parties and perused the material available on record.

It goes without saying that under the law it was the responsibility of the applicant to produce the accused before the trial court without fail on each and every date of hearing but he failed in his duty. Intimation that the accused was in jail was communicated to the Trial Court only after about five months of his absence. No explanation for the absence of the accused for that period was afforded to the Trial Court by the applicant. We are of the view that applicant's liability to produce the accused before the Trial Court was complete and when he failed in his liability, he was bound to deposit the surety amount and no exception in this regard can be taken. However, we cannot ignore the fact that ultimately the accused after trial was acquitted. The offence as alleged by the prosecution was not proved. This circumstance can be considered a mitigating factor in favour of the applicant.

Accordingly by taking a lenient view in view of above circumstances, we reduce the amount of penalty from Rs.25,000/- to Rs.10,000/- which the applicant shall pay within a period of one month from today.

In the above terms this application is disposed of.

JUDGE

JUDGE