

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Adnan-ul-Karim Memon.

Cr. Revision Application No. 173 of 2016

Kanwar Naveed Jamil Applicant

V E R S U S

The State Respondent

&

Cr. Revision Application No. 174 of 2016

Kanwar Naveed Jamil Applicant

V E R S U S

The State Respondent

Date of hearing 30.12.2016

Mr. Irshad Ali, Advocate for the applicant.

Mr. Muhammad Iqbal Awan, A.P.G.

Special Public Prosecutor called absent.

Muhammad Ali Mazhar, J: In fact, these Criminal Revision Applications have been brought to challenge the order dated 17.12.2016, passed by learned A.T.C. Court No.II in Special Case No.1496 and 1497 of 2016, whereby, learned court refused to accept the immovable property as surety.

2. The brief facts of the case are that the applicant applied for post arrest bail in crime No. 16 of 2016, lodged under Section 123-A/124-A/109/114/34 PPC r/w Section 7 of ATC, 1997 and Section 25 of Telegraph Act and FIR No. 117 of 2016 lodged under Section 147/148/149/186/353/324/302/435/436/337/123-A/124-A/109/114/427/506-B/395/34 P.P.C, r/w Section 7 of ATA, 1997 at P.S. Artillery Maidan, Karachi. The concession of bail was allowed to the applicant by the learned trial court in both the aforesaid crimes vide order dated 15.12.2016 subject to furnishing solvent surety in the sum of Rs.2 Million each with P.R. bond in the like amount. The relevant para of bail orders, which is identical in both the cases, is reproduced as under:-

“Spl. Case No.1496 of 2016

16. However, the above may be the accused was not present at Press Club on 22.08.2016 at 1720 hours as per C.D.R therefore question of raising slogans and provoking does not arise and is granted bail in the sum of Rupees Two Million, with P.R Bond in the like amount. He is directed to deposit his passport with this Court and he is not allowed to leave Pakistan without permission.”

“Spl. Case No.1497 of 2016

18. However, the above may be, the accused was not present at Press Club on 22.08.2016 at 1720 hours as per C.D.R therefore question of raising slogans and provoking does not arise and is granted bail in the sum of Rupees Two Million, with P.R Bond in the like amount. He is directed to deposit his passport with this Court and he is not allowed to leave Pakistan without permission.”

3. After granting bail, the surety wanted to deposit original documents of Shop No.26, Toba Center, Sir Shah Muhammad Suleman Road, Karachi and in the affidavit he shown the value

of property more than Rs. 6 Million. When the surety papers along with lease deed were produced before the learned trial court for acceptance, the learned trial court rejected the documents with the following order:-

“ I do not take documents of Immovable Property as surety.

Sd.
17.12.2016.
Judge
A.T.C-II, Karachi”

4. Learned counsel argued that there is no bar against the acceptances of surety of immovable property and since the applicant has been granted bail subject to furnishing surety in the sum of rupees two million in each case, therefore, it is very difficult for him to arrange the defence saving certificate of Rs. 4 Million and despite granting bail on 15.12.2016, he is languishing in jail. He further argued that the value of shop is more than Rs. 60,00,000/- but it was not accepted in surety.

5. Learned A.P.G argued that there is no bar in the law not to accept the immovable property as surety, however, it is in the domain of the learned trial court that before accepting the surety the solvency and verification may be called for the satisfaction of the court.

6. We have observed that before the learned trial court, learned Special Prosecutor Mr. Sajid Mehboob Shaikh appeared so before hearing this matter, we issued notice to him. The Process Server has submitted the report that notice was served on Mr. Sajid Mehboob Shaikh, Special Prosecutor.

We called the matter twice but he failed to appear despite notice.

7. Since the learned trial court has already granted bail and under the law there is no such provision available to deny the acceptance of surety merely for the reason that surety wants to deposit the original documents of immovable property. No reason has been shown in the impugned order by the learned Presiding Officer as to why the immovable property is not acceptable nor any issue of its solvency has been raised. The purpose of furnishing surety is to ensure the attendance of the accused in the court and in case of any default, the surety has to face the consequence as laid down under Section 514 Cr.P.C. It is not the case here that the surety is not solvent or there is some issue regarding the genuineness or its veracity of the title. However, it is discretion of the learned trial court that before accepting any such surety, the proper verification and genuineness of the documents may be satisfied.

8. As a result of above discussion, the Criminal Revision Applicants are disposed of with the directions to the learned trial court to accept the surety of the immovable property. However, it is open to the learned trial court to seek proper verification and valuation of the property before accepting it for their satisfaction.

JUDGE

JUDGE