

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No. 194 of 2008

Date	Order with signature of Judge
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1. For order on MA. No.12593/2016
2. For hearing M.A. No.11350/2016

30.12.2016

Mr. Muhammad Ashraf Kazi, advocate for the appellant.
Sh. Liaqat Hussain, Standing Counsel.

1. Urgency granted.

2. The sentence of the appellant was suspended by this court vide order dated 22.10.2008 and he was allowed bail. However, during pendency of this appeal, appellant expired. The order sheet dated 23.09.2016 reflects that the original death certificate was brought in the knowledge of the court, therefore, the appeal was abated. However, when the application for discharge of surety was filed the order dated 07.12.2016 reflects that the learned Standing Counsel admitted the factum of appellant's death but he raised a question that fine was also imposed upon him and unless fine is recovered, the surety cannot be discharged, therefore, on this point the matter was adjourned. It is an admitted fact that the appeal has been abated and so far as the question of fine or recovery of fine is concerned that cannot be imposed or linked with the surety. The purpose of surety is to undertake the regular attendance of the accused in court and in case of any default, the surety is liable for forfeiture. It has nothing to

do with the acceptance of liability for the payment of fine or its discharge by the surety himself. The provision contained under Section 386 Cr.P.C is clear in which the detailed mechanism has been laid down for issuance of warrant for levy of fine. In this provision also no responsibility was imposed on the surety for the payment of fine but this is a direct provision for the recovery of fine against the offender which could be invoked.

In view of the aforesaid situation, the learned Standing Counsel has no objection. The Nazir is directed to release the surety on proper verification and identification. C.M.A. No. 11350 of 2016 is disposed of accordingly.

JUDGE

JUDGE

Aadil Arab