

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr. Appeal No. D — 173 of 2006.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>30.05.2017.</u>	

Appellant Muhammad Afzal is called absent.

Mr. Shahzado Saleem Nahiyoan, Asstt. P.G. for the State.

Appellant Muhammad Afzal alias Ustaad was tried by learned Ist Additional Sessions Judge / Special Judge CNS Hyderabad, in Special Case No.125 of 2004, for offence under section 9(c) Control of Narcotic Substance Act 1997. By Judgment dated 20th July 2006, appellant was convicted under section 9(c) Control of Narcotic Substance Act 1997, and sentenced to 04 years R.I. and to pay the fine of Rs.100,000/-. In case of default in payment of fine he was ordered to suffer R.I. for 06 months more.

Appellant preferred instant appeal bearing Criminal Appeal No.D-173 of 2006 on 18.04.2015, through Superintendent Central Prison Hyderabad on 08.08.2006. Appeal was admitted for the regular hearing. During the pendency of the appeal, appellant applied for suspension of sentence under section 426 Cr.P.C. and this Court suspended his sentence vide order dated 25.04.2007, as a result of which, the appellant was released on bail but after release from Jail he never appeared before this Court. In the first instance, this Court vide order dated 21.4.2011 issuedailable warrants against appellant and notice to his surety but they didn't appear. Process was returned unserved with the endorsement that the appellant was not present at his house and he had gone to Karachi. It appears that after suspension of the sentence on 25.04.2007, the applicant has become fugitive from the law.

Learned A.P.G. submits that appellant has become fugitive from the law and prayed for dismissal of the appeal. In support of his submissions he has relied upon the case reported as **Ikramullah v. State** (2015 SCMR 1002).

From the perusal of the record it transpired that after suspension of the sentence by order dated 25.4.2007, the appellant never appeared. B.Ws were issued against the appellant which also returned unexecuted. We agree with learned A.P.G. that there is sufficient material on the record that accused has become fugitive from the law. The law is settled by now that a fugitive from the law loses his right of audience before a court, as held by Honourable Supreme Court in the case of **Ikramullah v. State** (2015 SCMR 1002), relevant portion of the same is reproduced as under:-

“A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15-4-2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.”

In the view of above circumstances, it appears that appellant has become fugitive from the law after release on bail as a result of suspension of his sentence. The appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the concerned police or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal.

Needless to mention that action against the surety shall be continued in terms of the order dated 21.04.2011.

JUDGE

JUDGE

A.

