

Order Sheet

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

Cr. Revision Application No. S- 17 of 2019.

Date	Order with signature of Hon'ble Judge
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1. For hearing of M.A No.1194/2019.
2. For hearing of main case.

26.9.2019.

Mr. Sarfraz Khan Jamali, advocate for the applicant.

Mr. Raja Imtiaz Ali Solangi, A.P.G.

ORDER.

ARSHAD HUSSAIN KHAN,J., Through this criminal revision application, applicant Nizamuddin Abro has challenged the impugned order dated 11.02.2019 passed by learned 1st Additional Sessions Judge, Kamber, whereby entire surety bond of Rs.100,000/- has been forfeited on account of jumping bail by accused Mooso @Muhammad Moosa Abro in Crime No. 33 of 2012 of P.S Nasirabad for offence under Section 379, 462-B, 427 PPC & 13 ANA.

2. Briefly stated the facts of the matter are that the Applicant Nizamuddin Abro stood surety for accused Mooso @Muhammad Moosa Abro who was granted interim pre-arrest bail on 23.4.2014 by learned Sessions Judge Kamber-Shahddkot in Crime No. 33 of 2012 of P.S Nasirabad for offence under Section 379, 462-B, 427 PPC & 13 ANA and the matter was assigned to learned 1st Additional Sessions Judge, Kamber, for confirmation or otherwise where on the very next date of hearing, i.e. 05.05.2014, accused Mooso @Muhammad Moosa Abro jumped bail. The trial Court afforded several chances to the applicant/surety to produce the accused in Court, but he failed, therefore, after exhausting all the legal formalities the learned trial Court forfeited the entire surety bond of Rs.100,000/- vide order dated 11.02.2019, giving rise to filing of instant criminal revision application.

3. It is mainly contended by learned counsel for the applicant/surety that the order impugned is not sustainable in law as the learned 1st Additional Sessions Judge, Kamber, while passing the impugned order has failed to take into account the fact that on 05.05.2014 the case of the accused was fixed however, before the date of hearing of the case, pre-arrest bail was fixed for confirmation or otherwise but the same was dismissed and the order of pre-arrest bail was recalled; faced with such situation, the accused could not appear before the

court. In the circumstances, the order of forfeiture of bail bond and directions to the surety to pay the surety amount of Rs.100000/- is not in accordance with law. It has also been contended that accused Mooso alias Muhammad Moosa after the grant of interim pre-arrest bail disappeared, however, the applicant/surety in order to show his bonafide had been attending learned trial court regularly; it is further contended that the order for forfeiture of bail bond and directions to the surety to pay an amount of Rs.100000/- is harsh as the applicant is a poor fellow and he stood surety on behalf of the accused only on humanitarian ground in the name of Almighty Allah and earning his livelihood by working as labourer and as such the said order is untenable in law. It has also been contended that the applicant had made a part payment of Rs.20,000/- towards forfeited bond, therefore, while taking a lenient view he may be excused from payment of remaining forfeited amount of surety.

4. Learned A.P.G has vehemently opposed the application and supported the impugned order on the ground that the accused jumped bail on the very next date of hearing and remained absconder and he was also declared proclaimed offender and that despite several chances afforded to the applicant/surety he failed to produce the accused in the Court and resultantly proceedings have been delayed.

5. From perusal of the record, It appears that accused Mooso alias Muhammad Moosa after grant of interim pre arrest bail jumped bail on the very next date of hearing and subsequently he was also declared proclaimed offender for remaining absconder constantly for about five years and despite several chances were afforded to the applicant/surety he failed to produce the accused in Court, thereby he violated the terms of affidavit sworn by him while standing surety on behalf of the accused that he will produce the accused on each and every date of hearing and in case of failure he would be liable to pay entire surety amount, therefore, no lenient view could be taken in this case.

6. It is now well settled that in order to curtail the tendency of jumping bail by the accused, no lenient view should be taken and the entire amount of bail bond should be recovered from the surety as an amount of penalty. The Honourable supreme Court in the case of Zeeshan Kazmi v. The state (PLD 1997 SC 267), inter alia, has held as under

“8. We may observe that it has now become common that the accused persons involved in heinous offences, if succeed, in obtaining bail, jump the bail bonds. To check the above tendency and to provide deterrent special provisions F3 have been enacted and/or are being enacted in the special statutes prescribing the minimum amount of bail bond for

example, under section 5(7) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984, it has been provided that the bail amount would not be less than twice of the amount involved in the commission of the offence. Keeping in view the above bleak scenario which has emerged, with the passage of time on account of the lack of respect of the rule of law, and because of the unprecedented continuous steep inflationary tendency It` resulting in the loss of money value, the Courts should not show any undue leniency while forfeiting bail bond amount. Their approach should be dynamic and progressive-oriented with the desire to discourage the accused persons to jump bail bonds. There is no legal requirement that full bail bond amount should not be forfeited, on the contrary, once an accused person jumps bail bond, the entire surety amount becomes liable to be forfeited in the absence of any, mitigating circumstances. In the case of **Jamroze Khan v. The State** (supra), the Additional Sessions Judge concerned forfeited the full amount of surety bond, it amount, namely, Rs.50,000 in a murder case. The High Court as well as this Court declined to interfere with the above order. In the other cases, referred to hereinabove, the High Court had reduced the forfeited amount, but this Court declined to interfere with the same.”

7. Record also reflects that the applicant/surety has not brought any circumstance on record to show that he made serious efforts for production of accused before the Court. Whereas learned trial court had observed all legal formalities and provided ample opportunity of hearing to the applicant as well and while keeping in view the legal and factual position ordered the forfeiture of full amount of bail bond, thus the order is unexceptionable and the applicant is not entitled to the relief claimed in the present case. It may also be observed that on account of jumping bail the delay is caused in disposal of the case which action is not at all acceptable and the court cannot take lenient view in this regard. Reliance can also be placed on the case of Ali Gohar Tangwani v. The State(2013 P.Cr.LJ 575).

8. In the circumstances, in my view, neither any ground for taking a leniency has been brought on the record nor any illegality or procedural defect in the impugned order has been pointed out, which could warrant interference by this Court through present proceeding, therefore, instant criminal revision application being devoid of merits is dismissed.

JUDGE

shabir