

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No.S-39 of 2020

Date

Order with signature of Judge

1. *For orders on office objection.*
2. *For hearing of Main Case.*

07.02.2020

Mr. Saeed Ahmed Magsi, Advocate for the applicants alongwith applicants.

Mr. Hussain Bux Baloch, Addl. Prosecutor General, Sindh.

-x-x-x-x-x-

Applicants Hafiz Fayyaz Samoo and Mehmood @ Faqir Muhammad Chandio alongwith co-accused Muhammad Anwar Jokhio, Shah Nawaz Baloch and Allah Bux stand booked in FIR No.04/2018 of P.S Anti Encroachment Force Zone-II, Karachi, under Section 8(i) SPP(ROE) Act 2010. After due investigation as well inquiry, the case has been challaned by the police on 01.11.2018 which is now pending for trial before the Court of Special Judge, Sindh Public Property (Removal of Encroachment) Karachi vide Special Case No.03/2018 (re-the State Versus Muhammad Anwar Jokhio and others). As and when applicants learnt about pendency of instant case against them, have rushed through their advocate by filing pre-arrest Bail Application(s) No. 09/2018, 11/2018 & 13/2018 respectively, where they were granted ad-interim pre-arrest bail in the sum of Rs.100,000/- (Rupees One Lac) each and P.R bond in the like amount to the satisfaction of learned trial Court on 08.10.2018. After issuing the notices to other side, and hearing to the parties, their bail application(s) were granted/allowed by means of order dated 23.01.2020; however, their surety amount was enhanced from Rs.100,000/- (Rupees One Lac) each to Rs.10,00,000/- (Rupees Ten Lacs) each, with directions to furnish enhanced the surety amount within seven days and in case of their failure their bail (bonds) will be (deemed to be) cancelled. Therefore, being aggrieved by that order, applicants have made it impugned through this Criminal Misc. Application seeking reduction of surety amount from Rs.10,00,000/- to Rs.100,000/- each.

Learned counsel for the applicants submits that applicants have voluntarily surrendered before the trial Court, therefore, question of their absconding from Court proceedings or tempering with the prosecution evidence does not arise. He next submits that enhancement of surety amount from Rs.100,000/- to Rs.10,00,000/- each is harsh one and it tantamount to deprive the applicants from concession of bail extended to them. He further submits that applicants after all their possible efforts are unable to furnish surety in the required amount i.e. Rs.10,00,000/- (Rupees Ten Lacs) each. He further submits that by granting instant application, impugned order may be modified and the surety amount may be reduced from Rs.10,00,000/- (Rupees Ten Lacs) to Rs.100,000/- (Rupees One Lac) each, which the applicants have already furnished before the trial Court. In support of his contention, learned counsel has placed reliance upon order dated 28.01.2020 passed by this Court in Criminal Misc. Application No.S-46/2020 and submits that same relief has been extended to co-accused and the applicants are also one of the effectee of said impugned order. He also placed upon the case of *ABDUL JABBAR Versus THE STATE (1998 P.Cr.L.J 1465)*.

In view of the arguments advanced by learned counsel for the applicants, Mr. Hussain Bux Baloch, Addl. Prosecutor General, Sindh has extended his no objection.

I have heard learned counsel for the applicants, learned Addl. Prosecutor General, Sindh and have gone through the material available on record.

The *moot* question, involved, revolves round the legality or otherwise of subsequently enhanced surety amount? At the outset, following settled legal positions need to be reiterated for a proper response to the involved question, which is "*releasing one on bail during course of trial is not of any legal effect when it comes to giving due to a guilty person*". This has been the reason that:

- i) bail in a bailable offence is the right of the accused;
- ii) bail in a case, falling within meaning of **further inquiry**, is also the right of the accused;

Such release is not meant to give any favour to accused but to make him face the trial which, otherwise, is the sole object of every charge /

allegation that it should meet its legal fate which is subject to **trial** and not by keeping the accused behind the bars. Such conclusion is drawn from section 499 of the Code which speaks about requirement of '**bonds**' by accused or surety. For an ease the same is referred hereunder:-

499. Bond of accused and sureties : (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

The only provision, speaking about '**Bonds**', itself requires nothing more than '**satisfaction of police officer or Court**' for quantum of surety amount. Such satisfaction; however, must always be reasonable one because demand of improbable or huge amount may result in frustrating the purpose and object of a **release order**, issued under section 497/498 Cr.P.C because failure of surety in producing the accused or payment of fine (surety) amount never operates as a bar upon the Courts to compel the attendance of accused by adopting permissible *coercive* measures. Here, it is important to add that when the release, per law or in view of the Court, becomes the right of the accused then such satisfaction should be a *little* more relaxed / liberal else same shall amount as a hurdle towards an earned right.

Having said so, now I would come to merits of the case to examine whether subsequent demand of enhanced surety amount is justified or otherwise?. The punishment provided by the law for Section 8(i) Sindh Public Property (Removal of Encroachment) Act 2010 is not more than one year, therefore, does not exceed the limits of prohibitory clause of Section 497 Cr.P.C and falls within the category of bailable offence. In bailable offences, bail becomes right of an accused not a grace or concession, therefore, when an accused earns remedy as of his right, he should not be deprived of the same. Reliance can be placed upon the case of **TARIQ**

BASHIR AND 5 OTHER Versus THE STATE (PLD 1995 SC 34). Since merits of the case have already been discussed by the trial Court and after considering all aspects of the case, the case against applicants was found to be one of further inquiry within the meaning of sub-Section 2 to Section 497 Cr.P.C, thus the applicants earned their release on bail as *right* and not as grace and their release (bail) was conditioned for furnishing surety in sum of Rs.100,000/- each; which the applicants have furnished and complied with in its letter and spirit. Such surety amount, according to my opinion, is sufficient and does not require enhancement; more particularly when the accused have voluntarily surrendered themselves before the Court concerned; the offence is not carrying any capital punishment, justifying imposing of huge surety amount.

Here, it is worth adding that so as to keep earned right or to avoid irreparable injury to an accused at end of the day, if he is found innocent, the reduction in ordered surety amount is *advisable*. In case of Abdul Jabbar (Supra), this Court has held and observed in following terms;_

"After having gone through the record I am of the view that the applicant is not in a position to furnish surety as ordered by this Court and this is the reason that in spite of grant of bail on 12-12-1996 he is in judicial custody. In my humble view once an accused is granted bail and in spite of all possible efforts he is unable to furnish surety in the required amount then keeping in view the facts and circumstances of the case a reasonable reduction in the surety amount may be made so that the applicant/accused may not suffer unnecessarily for reasons beyond his control. Just as bail is not to be withhold as punishment likewise after the bail is granted since the liberty of the accused is involved, therefore, if reasonable grounds are disclosed then the surety amount may be reduced having due regard to the facts of the case so that the very object of granting bail is not defeated."

I may *safely* add that the Court is competent to demand **sufficient** surety even after acceptance of earlier ordered surety which; however, shall be subject to reasonable justification or changed circumstances. At this juncture, referral to section 501 of Code, being relevant, is made hereunder:-

501. power to order sufficient bail when that first taken is insufficient: If through mistake, fraud or otherwise, insufficient sureties, have been accepted,

or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Prima facie, the impugned order, nowhere, shows that how earlier accepted surety amount became '**insufficient**'. In absence of such reasons, I would insist, that surety for enhanced amount would never be legal and justified.

In the circumstances and in view of the above discussed legal positions, I am of the opinion, *prima facie* case of interference is made out. Consequently, instant application is hereby **allowed**. Impugned order dated 23.01.2020 is hereby modified to the extent of interim bail granted to applicants/accused by the trial Court on 08.10.2018, is hereby confirmed on the same terms and conditions. Applicants are directed to continue their appearance before the trial Court till final decision of main case. The trial Court is also directed to expedite the trial by examining all material witnesses within shortest possible time under intimation to this Court through MIT-II.

Instant Application stands disposed of in the terms stated above.

JUDGE

Zulfiqar/P.A