

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.139 of 2022

Date	Order with signature of Judge
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1. For order on MA No.6355/2022
2. For hearing of main case

21.7.2023

Mr. Asif Ibrahim advocate alongwith Ms. Fouzia Aftab advocate for the applicant
Mr. Muntazir Mehdi, Additional PG

Through instant criminal revision petition, the applicant/surety has called in question the order dated 21.4.2022 passed by the learned V-Additional Sessions Judge, Karachi Central in Sessions Case No.569/2021 (*Re: The State versus Umair & others*), whereby bail bonds submitted by the accused Muhammad Umair, involved in F.I.R No.47/2021 under Sections 397/34 PPC, registered at Police Station F.B. Industrial Area, Karachi was forfeited in favor of the State and applicant being surety was directed to pay the surety amount of Defence Saving Certificate in the sum of Rs.50,000/- as penalty.

2. Learned counsel for the applicant/surety submits that the applicant, who stood surety on behalf of the accused Muhammad Umair and due to his ailment, remained absent before the trial Court on 01.4.2022; however, his counsel moved an application seeking condonation of his absence which the trial Court dismissed. In support of his contention, he has placed on record a copy of the case diary, which is available on page 17 of the Court file. He further submitted that the absence of the accused was intimated by the learned counsel; however, his request was declined on the premise that no proof of the ailment of the accused was produced and without adopting legal procedure as required under Section 514 Cr.P.C. and hearing the applicant, the surety bond was forfeited, which is a harsh punishment on the part of learned trial Court that cannot be maintained particularly when the accused surrendered by applying for anticipatory bail application bearing No.481/2022 wherein the interim bail was granted to the accused vide order dated 09.4.2022 and the same was confirmed on 16.4.2022 much before passing of the impugned order. He further submitted that this Court vide order dated 15.2.2023, directed the trial Court to submit a detailed report as to whether the accused Muhammad Umair after jumping over his bail bonds in terms of order dated

16.11.2021 has again been bailed out or otherwise. Learned counsel pointed out that the learned trial Court has submitted such report to the effect that accused Muhammad Umair after cancellation of his post-arrest bail on 01.4.2022 again applied for pre-arrest bail application No.481/2022, which was confirmed vide order dated 16.4.2022. He next submitted that in view of his cancellation of bail, the applicant approached the learned trial Court and obtained bail before arrest before forfeiture of his earlier surety due to the absence of the accused for one day; he next argued that the impugned order is illegal and without lawful justification for the simple reason that the accused before impugned action on the part of the trial Court surrendered and protection was provided to him by the trial Court, therefore, forfeiture of surety bond is liable to be set aside by this Court.

3. Learned Additional PG after going through the record of the case has extended his no objection if the order of forfeiture of surety bond passed by the learned trial Court is recalled by this Court.

4. I have the learned counsel for the parties and perused the record with their assistance.

5. A perusal of the impugned order shows that the accused failed to appear before the trial Court due to his illness, such intimation was given to the trial Court, however, the assertion of the surety was not believed and the learned trial Court insisted on production of a medical certificate of illness of accused though he subsequently produced the medical certificate along with his reply to the notice under Section 514 Cr.P.C., despite that the penalty of forfeiture was imposed upon the applicant/surety.

6. Prima facie, the impugned order is against the scheme of law relating to forfeiture of bond and realization of amount as provided under Section 514 Cr.PC, which read as under:

514. Procedure on forfeiture of bond. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the first class, or when the bond is for appearance before a Court, to the satisfaction of such Court. that such bond has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any movable property belonging to such person without such limits when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 107 or section 118 is convicted of an offence the commission of which constitutes a breach of the conditions of this bond, or of a bond executed in lieu of his bond under section 514 B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety, or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."

7. It is plain from a perusal of the language of the aforesaid section that it is incumbent on a Court to first declare the bond forfeit and to record the grounds for such a finding before calling upon the surety to pay the penalty thereof or to show cause why it should not be paid.

8. Primarily the main purpose of surety is to procure the attendance of the accused on every date of hearing, however, in the present case, the accused remained absent for one day, and due to his absence his bail was canceled and before passing of the impugned order, he appeared before the trial Court and he succeeded to obtain interim bail from the trial Court vide order dated 09.4.2022, which was confirmed vide order dated 16.4.2022 by the trial Court. It is surprising to note that after the cancellation of bail, the applicant ought to have approached this Court rather than applying for bail before arrest before the same Court which has already canceled his bail in terms of the order dated 01.4.2022 as per the diary sheet available at page 19 of the Court file. Be that as it may, since the applicant has been able to surrender before the trial Court after the cancellation of his bail thus, the purpose of surety to procure his attendance has been served in terms of the protection provided to him by the concerned Court, therefore, no further deliberation is required on the part of this Court.

9. In view of the above facts and circumstances of the case coupled with confirmation of bail of the accused in the same crime, the surety bond

so furnished by the applicant before the trial Court was/is no more required in terms of the order dated 16.4.2022 passed by learned V-Additional Sessions Judge Karachi Central in Pre-Arrest Bail Application No.481/2022, and by taking a lenient view in the matter under the peculiar facts and circumstances of the case, the impugned order is hereby set aside to the extent of penalizing the surety on account of his failure to procure the attendance of accused.

10. This criminal revision application stands disposed of in the above terms alongwith listed/pending application(s).

JUDGE

Zahid/*
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