

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Miscellaneous Application No.38 of 2024

Date	Order with signature of Judge
	1. For order on MA No.8712/2024 2. For hearing of main case

**Date of hearing and Order:- 03.07.2024**

Mr. Raj Ali Wahid Kunwar advocate for the applicant  
Mr. Muhammad Ahmed Assistant Attorney General  
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**ORDER**

**Adnan-ul-Karim Memon, J:-** The Applicant Hina Siraj Manoo is aggrieved by and dissatisfied with the impugned order dated 28.11.2023 passed by the learned Special Court (Commercial) For Sindh and Baluchistan Karachi, whereby her application was rejected, however alternatively she was allowed to exchange the sureties with a condition that she shall furnish surety in the shape of (security) D.S.C with similar amount as ordered earlier. An excerpt of the order is reproduced as under:-

*“Having given my anxious thought to the entire aspects of the case, I therefore reject the applications. The observations given are of a tentative nature and shall not affect upon the merits of the case.*”

*So far the prayer for alternatively they may be allowed to exchange the sureties is concerned, the same allowed with the conditions that furnish fresh surety in the shape of (security) SD.S.C with similar amount as ordered earlier.”*

2. The applicant/surety claims that in view of the order dated 18.4.2019 the attendance of the accused is regulated by furnishing P.R bond rather than sureties as the matter has been adjourned sine die till disposal of Civil Suit No. 945 of 2015. An excerpt of the order is reproduced as under:-

*“ In view of the above discussion, coupled with no objection recorded by the prosecution proceedings of the instant case is adjourned sine die till disposal of Civil Suit No. 945/2015. However, the case on file in this Court after disposal of the aforesaid civil suit. Bail bonds and sureties of the applicant/accused remain intact till further order. Application is disposed of accordingly.”*

3. The main thrust of the arguments of the learned counsel for the applicant/surety is that when the case has been ordered to be kept in abeyance against the accused it would be better to allow the accused to furnish a P.R Bond of the equivalent amount till the case is reopened upon the decision of Civil Suit pending adjudication before this Court, and in absence, it amounts to keep the applicant/surety under constant threat to procure the attendance of the accused on every date of hearing before the trial Court though the case has been adjourned sine die and there is no need for the appearance of accused on each date of hearing

if any as the accused had already been discharged in terms of order dated 18.04.2019, however, the sureties and bail bonds of the accused have erroneously been remained intact by the trial Court, which practice cannot be legally approved under the scheme of Criminal Procedure Code as Section 502 Cr. P.C. is inapplicable in this case. He argued that the order for keeping the case in abeyance and discharge of the accused till the reopening of the case based on the submission of P.R Bond by the accused shall not cause any prejudice to the case of the prosecution, therefore, the accused would be required to furnish his P.R. bond and bonds of surety, for the appearance if summoned by the trial Court at a later stage. In support of his contention, he relied upon the cases of *Ahmed Saeed Shaikhh vs Muhammad Bukhsh and another* **2016 P. Cr. L. J Note 127**, *Muhammad Safer vs The State* **2004 P. Cr. L.J 899**, *Mst. Sardaran vs The State* **PLD 1990 Karachi 233** and *Masood Hassan vs The State* **1986 P Cr. L.J 1772**. He concluded while praying for allowing the application.

4. On the other hand, the learned Assistant Attorney General has opposed the application with the narration that no illegality or material irregularity has been pointed out in the impugned order, though the proceedings of the case had been stopped, which has not been challenged by accused but according to him, the stoppage of proceedings is not tantamount to the end of the criminal proceedings, therefore, at this stage, the applicant/sureties are not entitled to the return of surety papers lying with the trial Court in terms of order dated 18.04.2019, as the criminal case is based on civil proceedings as the fate of the case can be reopened at any stage, as such the application is liable to be dismissed.

5. The facts of the case are that the accused Muhammad Waqar, Syed Imamuddin, Umar Ilyas, Shafi, Siraj, Sadiq Ghazala Waqar, Syed Ayazuddin, Muhammad Anwar were booked in complaint No. 01/2018 under Section 5 of the Imports and Exports(Control) Act 1950 TDAP/RD South (Trade Development Authority of Pakistan v Muhammad Waqar Manoo). The complainant disclosed that they sent numerous advance payments against Yarn purchases of USD 2052797.98 (US Dollar Two Million Fifty-two Thousand Seven hundred ninety-seven dollars and Ninety-eight Cents) to secure the price of raw cotton for a period that would allow the company to deliver yarn at agreed-upon prices to foreign buyers. The company did not deliver the yarn according to the contract nor refunded the amount paid to secure the price of raw cotton for a period that would allow Olympia to deliver the yarn had the agreed-upon price to the foreign

buyers during the proceedings. The foreign buyers were compelled to agree to USD 35000 monthly installments to cover the debit and to continue purchasing from the company under the agreement of a price discount on every delivery. This was required in terms of open L/Cs for delivery. The system worked for some months and the original amount of USD 2052797.98 was reduced to USD 1734849.19 which still stands payable to the foreign buyers. The accused applied to stay the proceeding sine a die under Section 344 Cr. P.C, which was disposed of vide order 18.04.2019 and thereafter applicant/surety applied returning/discharge of the surety in Case No. 01/2018, pending before Special Court (Commercial) for Sindh and Baluchistan at Karachi, which was disposed of vide order dated 28.11.2023, as discussed supra. The applicant being aggrieved by and dissatisfied with the aforesaid order has filed the instant Cr. Misc. Application No. 38 of 2024, on the ground that since the proceedings against the accused have already been stopped by the trial court, for an indefinite period, therefore, the surety papers already submitted by her before the trial Court, may be ordered to be returned the same to her and the accused may be directed furnish P.R Bond for their appearance in court subject to the reopening of the case as and when it occurs.

6. I have heard learned counsel for the parties present in Court and perused the material available on record.

7. In the instant case when the proceedings against the accused were stopped by the consent of the parties, they were on bail. It is well settled that release/discharge in such a case can only be construed to mean release from the liability for attending the Court, consequent upon the stoppage of the proceedings, the case comes to an end for an indefinite period. Prima facie, the accused are, therefore, no longer required to attend the Court proceedings due to stoppage of the proceeding sine a die till disposal of Civil Suit No. 945 of 2015. In such a scenario I have come across section 249, Cr. P.C., which is like section 253 Cr. P.C., which was deleted in the wake of law reforms. The defunct section empowered the Court to "discharge" the accused at any stage of the case before framing of charge against him/her. However, the accused's discharge under the said section did not operate as a permanent closure of the case against him/her. After his discharge, if sufficient evidence became available, the case could be revived against him/her. Similarly the stoppage of the proceedings under section 249, Cr.P.C. has the effect of discharging the accused until such time when on availability of the requisite evidence the case could be revived against him/her. However, in the present case, the proceedings

have been adjourned sine a die till disposal of the civil proceedings and the prosecution was set at liberty to file an application for bringing the case on file before the Court after disposal of the aforesaid civil proceedings. In the meanwhile the bail bonds and sureties of the accused were ordered to remain intact till further orders, which triggered the cause the surety/applicant to apply for discharging the surety with substitution of P.R bond in the like amount as ordered by the competent Court of law, when the bail of the accused was granted. It is admitted position that the Civil Suit between the parties is pending adjudication before this Court and the fate of that suit is yet to be decided, in the meanwhile keeping in view the legal position of the case that normally criminal proceedings should not be postponed pending the disposal of the civil litigation connected with the same subject matter, but where it is clear that criminal liability is dependent upon the result of the civil litigation or is so intimately concern with it that there is a danger of grave injustice being done in the case, if there be a conflict of decision between the civil Court and the criminal Court then in such event it was/is equally clear that that criminal Court has not only the right to proceed but should also stay its hand until the civil litigation is disposed of.

8. I am, therefore, not inclined to endorse the view taken by the learned Assistant Attorney General for the simple reason, that the stoppage of the proceedings sine a die amounts to the termination of the case for the time being. Prima facie, in such a scenario the accused is not required to attend the Court as he/she stands released from such liability, the liability of his/her surety which extends to the accused's regular attendance in the Court also comes to an end by virtue of the order passed by the competent Court for postponing the proceedings sine a die. Primarily by no stretch of the imagination, the surety can be held to continue as surety for the accused for an indefinite period which, as pointed out above, may never be ended. In such a case it would be absurd to withhold the return of the surety papers deposited by the surety as it is for the accused to arrange or otherwise submit their personal bond of the equivalent amount for their appearance before the Court as and when required by the trial Court. However, it is at the discretion of the trial Court to pass an appropriate order if the attendance of the accused is required in the proceedings at any stage of the proceedings.

9. For what has been discussed above, the applicant/surety has made out a case for the return of surety furnished by her, as such, the criminal Miscellaneous Application is allowed with direction to the

trial Court to allow the accused to furnish their personal bond for appearance at any stage of the proceedings so ordered by the trial Court and the surety papers could only be released if the accused put their appearance and submit their personal bond for the aforesaid purpose. The office is directed to send a copy of this order to the trial Court for compliance.

**JUDGE**

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