

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Cr. Misc. Application No.183 / 2024**  
 [Ghulam Mustafa, the surety/applicant]

Date	Order with signature of Judge
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1. For orders on office objection
2. For hearing of main case.  
[Notice issued for 02.04.2024]

**02.04.2024**

Mr. Amir Jamil, Advocate for Applicant / Surety.  
 Mr. Fayyaz Hussain Saabki, Addl. P.G.

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ARSHAD HUSSAIN KHAN, J. Through this Cr.Misc. Application, the applicant has called in question the order dated 12.01.2024, passed by IIIInd Additional District & Sessions Judge, Karachi [South], in Sessions Case No.642/2023, whereby the surety amount of the applicant has been forfeited.

2. Learned counsel while referring to the impugned order submits that the applicant stood surety and deposited Rs.1,00,000/- for accused Mujeebur Rehman. He further submits that the applicant on 27.07.2023, at the time of hearing filed application for withdrawal of the surety amount, copy whereof was provided to the accused who upon receiving the notice of the application jumped out the bail and subsequently could not be traced out, therefore, trial court forfeited the surety amount. It is contended that the trial court while passing the impugned order has failed to apply its judicious mind and did not consider the fact that the application for withdrawal of surety was moved by the surety in presence of the accused, however, the trial court without observing the provisions of Section 502 Cr. P.C. given notice to the accused who subsequently did not appear before the court and jumped out the bail and resultantly the surety was forfeited. It is further contended that once the surety submits his application for withdrawal of surety, it was the duty of the court to take the accused in the custody as per the requirement of subsection 3 of section 502 Cr.P.C. It is also contended that the notice of the application was not warranted under the law. Learned counsel submits that the applicant / surety is a poor person and he has categorically mentioned in the application that he being an ailing person

needs the amount deposited as surety in the case for his medical treatment and further the accused is not willing to proceed with the case as till that date he has not engaged any counsel. Lastly, while relying upon the case of *Nawazo v. the State* [2004 SCMR 563], he submits that the Supreme Court of Pakistan in the identical circumstances directed release of the full surety amount to the surety.

Learned Addl. Prosecutor General while supporting the impugned order seeks dismissal of the application.

From perusal of the record, it appears that before the trial court on 27.07.2023 application for discharge of the surety was filed by the surety; whereas copy of the said application was provided to the accused on 31.08.2023 during proceeding. Since the accused was informed about the application of the surety for discharge of his surety as such he upon receiving notice did not turn up and jumped out the bail. Thereafter, he could not be traced out and resultantly the surety was forfeited. Section 502 relates to the discharge of surety; for the sake of ready reference the same is reproduced as follows :

“502 Discharge of Sureties:

- (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.
- (2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the persons so released be brought before him.
- (3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to custody”.

The Supreme Court of Pakistan while dilating upon the provisions of Section 502 Cr.P.C. in the case of *Nawazo v. the State* [2004 SCMR 563], has held as follows :

“6. It is to be seen that section 502, Cr.P.C. regulates the procedure for discharging of surety and in view of the facts and circumstances of instant case subsection (3) of section 502, Cr.P.C, is applicable. Because once the accused

persons have appeared or their appearance have been caused by the petitioner alongwith application, making request to discharge the surety bonds, the Court may have taken them into custody with direction to them to furnish fresh surety bonds. Unfortunately, the provisions of subsection (3) of section 502, Cr.P.C., were not complied with as a result whereof the accused-persons made their escape good because when the notice was issued to them, the case was adjourned and the apprehension which was expressed by the petitioner in the application proved to be-correct and they made their escape good for which they were already preparing. Therefore, under these circumstances, we are of the opinion that after the submission of application, it was not the responsibility/duty of the petitioner to again produce the accused person before the Court for the disposal of the application. In such-like cases decision is required to be taken expeditiously because if the time is allowed to accused, then they are bound to take undue benefit as it has happened in this case.”

Keeping in view the above dictum laid down by the Supreme Court of Pakistan, it appears that the trial court upon receiving application from the surety has failed to comply with the provisions of Section 502(3) Cr.P.C. Resultantly, the accused upon having knowledge of the application jumped out the bail and could not be traced out subsequently for which the surety cannot be held responsible. In the circumstances, the impugned order, in my view, suffers from illegality as such the same is set aside. Let the entire surety amount deposited by the applicant before the trial court be returned / released to the surety upon proper verification and identification.

JUDGE