

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Revision Application No.D- 31 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.
3. For orders on MA 7012/2019.

09.10.2019.

Mr. Muhammad Hashim Leghari, Advocate for applicants.
Mr. Jangu Khan, Special Prosecutor NAB.

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Applicants had earlier filed Constitution Petitions for pre-arrest bail in this court in Reference No.19 of 2016 pending before learned Accountability Court at Hyderabad and were granted confirmed bail vide order dated 21.03.2019 on their filing of statements seeking deposit of liability amount mentioned in said Reference against such relief. For a ready reference Para No.13 of said order is reproduced herein below:-

“It is pertinent to mention here that before any order is passed on merits, the petitioners namely Mir Aftab Shahani [C.P No.D- 1236 of 2016], Nazir Ali Katiar [C.P No.D-3708 of 2016], Javed Ali Baloch [C.P No.D-3029 of 2016], Naeem Akhtar Shoro [C.P No.D-3054 of 2016], Shahabuddin Mangi [C.P No.D-192 of 2017], Muhammad Sulleman Mallah [C.P No.D- 1076 of 2017], Muhammad Ali Shah [C.P No.D-1077 of 2017], Sarang Hussain [C.P No.D-1333 of 2018] and Rustam Ali Soomro [C.P No.D-185 of 2019] have filed their statements / applications seeking deposit of the liability amount as leveled in the impugned Reference No.19 of 2016. As a result whereof, their interim pre-arrest bail application is confirmed on the same terms and conditions laid down in their respective orders. However, they are permitted to deposit the liability amount in view of said Reference within a period of fifteen [15] days before the trial court and in case of failure, the trial court is fully authorized to cancel their bail without making any reference before this court and remand them to Jail till

payment of liability amount and act in accordance with law.” (underlined by us)

The applicants however did not deposit the liability amount in terms of said order and instead filed an application under section 151 C.P.C. before this court for modifying / reviewing the above order with a prayer that instead of liability amount they may be allowed to furnish surety for the said amount. The said application however was not pressed by learned counsel for the applicants on 18.05.2019 and was disposed of in the terms whereby the trial court was directed to decide the application for furnishing surety of the applicants on the same lines the surety of other co-accused has been accepted by. In terms of that order, the applicants approached the trial court by means of an application for submitting surety instead of the amount of liability. This application has been dismissed vide impugned order. Hence instant revision application.

Learned counsel for the applicants submits that they had never given a consent for depositing the liability amount and it has wrongly been reflected in the order dated 21.03.2019. He further submits that the applicants are ready to furnish the surety amount instead of depositing the liability amount against relief of bail.

Learned Special Prosecutor NAB on the other hand submits that other accused whose bail was confirmed in the same terms by the same order have deposited the liability amount except the present applicants who since passing of said order have remained absent from the trial court.

We have heard the parties and perused the relevant record. Applicants` ad-interim pr-arrest bail was confirmed on the same terms and conditions whereby they were

granted ad-interim pre-arrest bail and in addition to depositing of liability amount in terms of their statements filed for same purpose. They were permitted to deposit the said amount within fifteen (15) days. The trial court on their failure to do so was authorized to cancel their bail without making any reference to this court. This condition makes it obvious that in addition to the normal terms and conditions already set out the applicants were admitted to ad-interim pre-arrest bail subject to deposit of the amount of liability calculated against them by NAB. Pre-arrest bail applications in the event of failure of the applicants to comply with above condition were ordered to stand automatically dismissed as is evident from the observations that the trial court on their failure to deposit the liability amount would proceed to remand them to custody until payment of liability amount was made by them. The relief of bail in favour of the applicants in terms of above order would come in operation only when this condition is fulfilled by them. Applicants did not fulfill that condition and instead preferred to file a review application for modification of the said order which they subsequently withdrew themselves and appeared before the trial court with surety of amount of liability shown against them in Reference. Admittedly, the trial court was not competent to sit over the terms and conditions set out by this court for granting relief of pre-arrest bail to the applicants. Refusal of the trial court to accept surety instead of liability amount in such circumstances does not suffer from any illegality or irregularity justifying interference by this court in exercise of revisional jurisdiction. Also this court while exercising revisional jurisdiction for examining legality of the impugned order cannot admittedly change the terms and conditions against which the applicants were admitted to pre-arrest bail. The

applicants were extended such a relief not on merits but on their willingness to deposit the liability amount, which they now cannot evade. We, therefore, see no merit in this Criminal Revision Application and dismiss the same accordingly alongwith listed application.

JUDGE

JUDGE

Tufail/PA