

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No.833 of 2019
(Muhammad Younis Dawood **vs.** The State)

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

For hearing of MA No. 6803/2025

Date of hearings : 27.08.2026, 08.09.2026, 17.09.2026 & 22.09.2026.
Date of order : 09.10.2026.

M/s. Mallag Assa Dashti, Rehman Korai, Palwasha Tareen and Tabinda Zehri, advocate for applicant
Mr. Kashif Hanif a/w Mr. Waqar Memon, advocate for complainant
M/s. Khaleeq Ahmed DAG and Irshad Ali, Assistant Attorney General

ORDER

Muhammad Iqbal Kalhoro, J:- This order shall dispose of listed application filed for return of surety/security amount deposited by applicant Muhammad Haroon for appellant Muhammad Younis Dawood as one of conditions for release of latter on bail.

2. As per record, appellant had filed this appeal against a judgment dated 23.11.2019 passed by the learned Special Court (Offences in Banks), Sindh at Karachi, in Case No.37/2014, arising out of FIR No.27/2014 of Police Station FIA/CBC, Karachi, convicting and sentencing him as under:

- a) He is convicted U/s 420 PPC and sentenced to suffer 06 years R.I and fine of Rs.13364000/ In case of nonpayment of fine he shall suffer further S.I for 01 year more.
- b) He is also convicted U/s 468 PPC and sentenced to suffer 05 years R.I and fine of Rs.50000/. In case of nonpayment of fine he shall suffer further S.I for 06 months more.
- c) He is convicted U/s 471 PPC and sentenced to suffer 03 years R.I and fine of Rs.50000/. In case of nonpayment of fine he shall suffer further S.I for 06 months more.
- d) All the sentences shall run concurrently.
- e)

3. As per brief facts, the appellant was employed as Payroll Supervisor in the Payroll Department of the complainant-company. In that capacity he was custodian of cheque books, accounts books, etc. of the company. He was terminated from the company on 23.01.2013 on account of fraud by him and such FIR was registered against him. After his termination, the company conducted a review of the bank statements and bank accounts maintained in different banks and found that the appellant

had issued multiple pay orders in his name and in the name of one Munaf to the tune of Rs.1,900,000/-, Rs.1,700,000/-, Rs.110,000/-, Rs.300,000/- and Rs.1,350,160/- on different dates in the years 2008 and 2009. It was also discovered that he had also withdrawn cash funds through bearer cheques from the bank accounts of the company amounting to Rs.33,10,000/- on different dates in the year 2011 and 2012. It was also found by FIA in the investigation that he had invested the said amounts in Stock Exchange (shares-business). In order to conceal his crime, he had forged bank statements placed on the record, and forged the signatures of the company's authorized signatories.

4. Appellant had also filed an application (MA No.14080/2019) for suspension of sentence and release on bail pending the appeal. This application was allowed vide order dated 12.02.2020 by this Court and appellant was granted bail subject to submitting a pay order of Rs.13,464,000/-, besides surety of Rs.100,000/- with the Nazir of this Court. In compliance, applicant (Muhammad Haroon) furnished a surety of Rs.100,000/-, and a pay order of the aforesaid amount. Consequently, the appellant was released on bail.

5. Subsequently, this appeal was dismissed by this Court vide judgment dated 14.03.2022 upholding appellant's conviction and sentences. Appellant then filed a Criminal Petition No.519/2022 before the Supreme Court challenging the said judgment. Later on, he expired on 01.06.2022 and his counsel filed a Criminal Misc. Application No.1511/2024 seeking withdrawal of the petition on such ground. The Supreme Court allowed this application on 11.03.2025 and dismissed the criminal petition as withdrawn as well as having become infructuous. The order of the Supreme Court is as under:

“11.03.2025

Present: Syed Rifaqat Hussain Shah, AOR for the applicant.

The learned AOR for the applicant/petitioner states that the criminal petition has become infructuous because the petitioner has died and requests for withdrawal of the same. Therefore, the instant application is allowed and the criminal petition is both dismissed as withdrawn as well as having become infructuous.”

6. Thereafter, applicant filed this application on the ground that the pay order amounting of Rs.13,464,000/-, submitted by him for release of appellant on bail, was no more required by this Court as the appellant had died.

7. However, when this application was taken up for hearing, Mr. Kashif Hanif, advocate for the complainant, appeared and submitted that he had also filed an application claiming the said amount in favour of the complainant. This application (MA No.11105/2025) was taken up on 06.11.2025 and the Court ordered the office to fix the same in the Court. However, it seems, due to negligence of the office, it has not been displayed ever as fixed in the diary sheets. Although, it has all along been pending and being pursued by the Counsel. The same is also disposed of through this order.

8. In the course of hearing, a report on the matter from the Nazir was called. He has revealed that the subject pay order was issued by the bank on behalf of applicant, Muhammad Haroon from his account in the Habib Metropolitan Bank Progressive Plaza Branch, Karachi against a cheque of his account.

9. Applicant's case for return of surety is that he had stood surety on behalf of the appellant with an undertaking to produce him before this Court. After this appeal was decided, his undertaking and personal bond to that effect had expired. The appellant subsequently died when his petition against the judgment of this court was pending before the Supreme Court. What happened in the Supreme Court had no concern with his undertaking before this Court to produce the appellant. The amount for the pay order was paid from his personal account and it has nothing to do with the appellant. Hence, the amount along with profit accrued thereon should be returned to him. Learned counsel for the applicant to support the aforesaid arguments has relied upon certain case laws¹.

10. On the other hand, learned counsel for the complainant submitted that appellant had misappropriated the said amount while working in the complainant company, which prompted the latter to file an FIR against him with FIA, which in the investigation verified this fact and challaned him. The reason the Banking Court had imposed fine of the said amount was unflinching ability of the company to prove misappropriation of the said amount by the appellant. That he had given no objection to suspension of sentence and release of the appellant on bail when the appellant had agreed to submit a pay order of the fine amount in order to secure interest of the company subject to the final decision of the appeal.

¹ 1997 MLD 1677, 2020 SCMR 359, and 2024 MLD 161.

11. Learned DAG, however, opposed both the parties by stating that since deposited amount is the fine amount, it should go to the government treasury; the complainant may file a civil suit or resort to provision u/s 386 Cr.PC (Warrant for levy of fine) for recovery of the said amount, but it cannot be paid to either complainant or applicant. He submitted that the conviction and sentence awarded to the appellant by the Banking Court and affirmed by this Court have attained finality. The petition in the Supreme Court challenging the same was subsequently withdrawn by the advocate himself on account of death of the appellant. That even after death of the appellant his legal heirs had the option to contest the conviction and sentences of the appellant, particularly in respect of fine, but they chose not to. Per him, once the fine amount was deposited, even as a condition of bail, the same would not be returned to applicant, as the conviction and sentence awarded to the appellant still hold field and have not been turned down.

12. We have considered submissions of the parties and perused material available on record including the case law cited at bar. The question which now requires determination is whether, in the given circumstances, the amounts paid by applicant towards fine through the pay order (Rs.13,464,000/-) are liable to be returned to the applicant or not. It is not disputed that the pay order was issued from personal account of the applicant, or that it was submitted by him in the Court as one of conditions of the bail to the appellant. It must be recalled, however, before any further discussion, that payment of the entire fine to secure interest of the company in the Court was offered by the appellant himself to secure his release on bail, with only one caveat: decision of the appeal (then pending in this Court).

13. Ultimately, the appeal was dismissed, and the Criminal Petition before the Supreme Court was withdrawn on account of appellant's death. The legal heirs of the appellant did not choose to contest the petition on the issue of fine and allowed its simpliciter withdrawal. This means that the conviction and sentences along with fine awarded to the appellant under relevant provisions by the trial court and affirmed by this Court have been maintained in final terms.

14. The trial against the appellant was held by the Special Court (Offences in Banks) at Karachi. The Special Courts are established u/s 3 of the Offences in Respect Of Banks (Special Courts Ordinance, 1984. Whereas, powers of Special Courts are defined in section 6 of the said

Ordinance. Subsections (3) & (4) thereof are relevant. Subsection (3) says that where a Special Court passes a sentence of fine, whether in addition to any other punishment or not, the amount of such fine shall be fixed by it having regard to gravity of the offence for which the accused person is convicted and, where the Special Court finds the offence to have been committed in respect of a specified amount it, shall not be less than twice the said amount. Subsection (4) directs that where a Special Court passes a sentence of fine, the Court shall order the whole or any part of the fine recovered to be applied in the payment to the bank in respect of which the offence was committed of compensation for the loss caused to it by the offence.

15. Both the said subsections have in the past come under discussion before this Court in different cases², albeit in a distinct context, and on both the occasions, this Court has affirmed that in terms of the said provisions, the Special Court is empowered to order payment of the whole or any part of the fine to the bank as compensation for the loss suffered by it. The premise in subsection (4) seems to be mandatory and does not leave any option to the Special Court to deviate from it — once it finds the accused guilty and decides to pass a sentence of fine — and order utility of the fine in other area than the one contemplated in this provision. Once the fine has been imposed, a part thereof or the whole has to be applied to compensate the bank for the suffering endured by it throughout.

16. It is clear that we have in our hands a specific provision, and it is mandatory to boot, which empowers the Special Court to deal with the fine in a way so as to compensate the bank for its loss. There is no other way or option to the Court to allow disposal of the fine differently than the one postulated by the law itself. This being the position. Now, we come to consider terms of the order whereby the appellant was granted bail. For a ready reference, the same is reproduced herewith:

“12.02.2020

Mr. Zulfiqar Ali Khan, Advocate for appellant.
Mr. Kashif Hanif, advocate for complainant.
Mr. Muhammad Ahmed, Assistant Attorney General.

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1. Adjourned.

2. Appellant has been convicted in various offences including 420, 468, 471 PPC to suffer different terms, maximum of which is 06 years vide impugned judgment dated 23.11.2019 passed by

² 1987 MLD 1500, 1989 PCr.LJ 363.

learned Presiding Officer, Special Court (offences in Banks) Sindh at Karachi in Case No.37/2014 bearing Crime No.27/2014 of FIA, CBC Karachi.

Learned counsel for appellant has argued application u/s 426 Cr.P.C. on the ground that the appellant is ready to submit pay order of the entire fine amount imposed on him vide impugned judgment with Nazir of this court in order to secure interest of the company/the complainant subject to final decision of this appeal.

Learned counsel for complainant and learned Assistant Attorney General on these terms have extended no objection.

Accordingly, this application is allowed. Appellant shall submit pay order of Rs.13464000/-, besides surety of Rs. 100,000/- with Nazir of this court and subject to that, sentence of the appellant is suspended and he is granted bail. After the pay order is submitted by the appellant, Nazir shall invest the same in some profitable scheme.

Application stands disposed of.”

17. A perusal of the order indicates that it contains a clear-cut offer made by the learned counsel on behalf of the appellant that he, against release on bail, was ready to submit pay order of the entire fine determined *vide* impugned judgment in the Court to secure interest of the company. And furthermore, he agreed that fate of this amount should be subject to final decision of this appeal. The order also shows that only against such unequivocal offer, the company’s counsel extended no objection, and only in consideration thereof, this Court had granted the appellant relief of bail.

18. Appellant’s such offer and its acceptance by the company’s lawyer depicted their clear concept of all the concomitant ramifications. Both the parties had agreed to putt their eggs in one basket: the outcome of the appeal. The appellant to its positive result, and the company, otherwise. The appellant knew that only if he was acquitted, he would be entitled to return of the fine amount, else it would be used to cover the company’s loss. The company had also the same end in mind. Hence, it conceded the proposal and gave no objection to release of the appellant on bail pending appeal, otherwise, predictably, it would have contested this point on merits and opposed the bail.

19. No explanation, other than that, could be advanced for no objection given out-rightly by the Company’s lawyer; and this Court’s indulgence in granting bail to the appellant without even touching merits of the case. The offer fomented positive reaction from the company and resultantly the Court decided to conform to it without further ado. Without such outcome (of offer) in mind, neither response of the company, nor forbearance of this

Court to the appellant would have been possible, when the appeal was still at initial stage.

20. Therefore, at this juncture, when the appellant is no more but the conviction and sentences against him are final for good, the claim by the applicant to the fine amount just because it was deposited by him would not be seen in isolation of the offer and its consequences made by the late appellant to earn his midterm release, and the events following it such as conduct of the company's lawyer and a lenient view taken by the Court.

21. It is obvious that the applicant did not act on his own but on behalf of the appellant. It was not that he was required, nor that he was asked by the Court to deposit the fine (on behalf of the appellant). Instead, he was asked by the appellant to deposit the fine on his behalf and he did so. He did not deposit the amount to discharge his own obligation, but to enable the appellant to discharge his own. So, it is clear that it was the appellant, who acted, but he did so, through the applicant. In this whole episode, the applicant has acted as a representative of the appellant. On appellant's death, his representation has ended.

22. So, the question would be whether he can make a request now that he should be given the amount deposited by him on behalf of the appellant. Because, he had actually obliged the appellant and not the Court and had deposited the amount at his behest. The appellant was under the burden, and not the applicant, he merely discharged his burden. As for as the Court is concerned, the fine was deposited by the appellant, albeit through the applicant. Whatever obligation the applicant owes, he owes it to the appellant. Therefore, he cannot turn around and ask for the said amount, saying that since he had deposited it, he is its owner, and as such has a right over it.

23. Neither the company, nor the Court had assumed at the time of granting bail that even if the appellant fails, he would still be entitled to the amount. Let us assume that applicant is alive and files application for return of fine amount, would it be returned to him, the answer would be no. Because his obligation to pay the fine amount in view of conviction and sentence sustained throughout against him has become absolute. And then, any such eventuality would result in revival of the obligation. He would then be asked by the Court to deposit the amount, which actually is already with the Court in terms of applicant's own offer. This would, if undertaken, be a preposterous exercise, at best.

24. The Court once has secured the fine amount at any stage will not return it to the accused, who has failed to earn his acquittal up to the last forum; and leave the complainant to go file an application u/s 386 Cr.PC for its recovery. Such approach, we may repeat, would be absurd and ludicrous. The appellant made the offer to pay the fine to secure the loss of the company to get bail, and both the company and the Court accepted his offer. The source employed by the appellant to arrange the fine amount is immaterial not only for the company but for the Court as well. The company and the Court both had the interest in payment of the amount by the appellant, as per his undertaking, and not in the source used by him for generating the said amount. The appellant was required to pay the fine amount and he did so out of his own volition to earn his release on bail. The fine amount came from the applicant's bank account ultimately had nothing to do with the condition of bail to the appellant. The only condition underlying the whole episode was the outcome of the appeal, which having gone against the appellant has shut every door for him to make a claim over the said amount for good.

25. If, however, the applicant is finding himself at the receiving end now, it is mainly because of his personal arrangement etc. with the late appellant. He obliged the latter and deposited the fine amount on his behalf to secure loss of the company, subject to outcome of the appeal. The result having gone against the appellant, the loss of the company would stand secured for good. The company cannot be made to suffer again by entering into another round of litigation to secure what it has already secured by relenting in favour of the appellant at the time of his plea for bail. As far as money paid by the applicant on behalf of the late appellant is concerned, he may, if he so wishes, recover it from his legal heirs. His claim over the fine amount, as far as this Court is concerned is separate from the offer, acceptance thereof, its execution and consequent release of the late appellant on bail. For the Court, the fine amount was deposited by the appellant with understanding that in case the result is adverse, the company's loss would be compensated, and it will not have to run from pillar to post for recovery of the same.

26. For further guidance on this point, we may refer to an order of the Supreme Court³. In this case also, the Surety had deposited amount equal to liability of the accused as a condition of bail. He filed application for

³ C.M.A. No.501-K/2023 in C.A. No.85-K/2018, reported as 2024 SCMR 749.

discharge of the surety after conviction and sentence of the accused was upheld up to the Apex Court. His ground was identical to the present one: his liability to produce the accused in the court had ended along with the case. The Supreme Court has founded many reasons to dislodge effectiveness of such claim. Among them is a clear-cut remark that the case of the Surety is not commensurate or complementary to the conditions set forth in the bail order. Because, the Defense Savings Certificates were tendered /deposited to cover up and secure the fine amount. The appellant had voluntarily proposed and was ready to deposit the entire amount of his liability, and not as surety, and only on such offer, the DPG had extended no objection, following the dictum laid down in the case of Shamraiz Khan vs. the State **(2000 SCMR 157)**.

27. In the same case, the Surety had also taken a ground that if the NAB wanted to recover the fine amount, it should invoke Sec. 33-E of NAO, 1999 which mandates recovery of the fine amount through a procedure provided in Land Revenue Laws. Before us, section 386 CrPC was cited, which is *pari materia* to the above provision and requires the same procedure to be followed for recovery of the fine amount. But, the Supreme Court did not agree by saying that the appellant tendered the amount in lieu of availing discretionary relief of bail in respect of liability fixed by the NAB Court and affirmed by the High Court without any change in the quantum of the fine.

28. The above remarks are followed by a lengthy discussion in para 11, which for a ready reference is reproduced herein under:

“11. In the instant case, the appellant on his own wish and volition, agreed to deposit the misappropriated amount calculated by the NAB against him, which is still intact. The conviction has attained finality, as nothing suggests that the judgment of the High Court was ever challenged in this Court. Nothing in the bail order of this Court reflects that the appellant was called upon to furnish the surety, but he showed willingness to deposit the entire amount of liability. Therefore, the application for the withdrawal of surety was misconceived and injudicious. There is also no logical justification to call upon the NAB to start from scratch and initiate proceedings under Section 33-E of the NAO, 1999, after returning the amount to the appellant. If it happens, it will amount to defraud and deceive the Court to first secure the bail order through misrepresentation and, after finalization and affirmation of the judgment of the conviction by the Trial Court and Appellate Court, implore the release of the amount which is nothing but an ineffectual endeavor to deprive the National Exchequer of making the loss good, which was suffered due to corruption and corrupt practices. The appellant wants to drag the condition of payment of fine without any lawful justification. Even the applicant, who

wants the release of the Defence Savings Certificates, was fully aware of the condition of the bail order and came forward to furnish certificates equal to the fine amount to rescue his own father. The ratio of the judgment rendered by this Court in the case of Muhammad Kaleem Bhatti (supra) deduced that Section 33-E of the NAO, 1999 is not controlled or regulated by Section 70 of the PPC; rather, the provisions contained under NAO, 1999 will prevail as the same is a special law. The sentence of imprisonment in default of payment of fine does not absolve the liability to pay fine and such amount of fine can be recovered despite undergoing the sentence in default of fine for the reason that imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine. In the instant case, there is no need to initiate or invoke proceedings under Section 33-E of the NAO, 1999 afresh when the amount is already deposited as admitted liability and not as surety. The office is directed to hand over the Defence Savings Certificates to the NAB after fulfilling all requisite formalities for the encashment of liability determined by the NAB Court and affirmed by the High Court to attain finality in the matter.

29. The fine imposed by the learned Special Court is as under:

Rs.13,364,000/- u/s 420, PPC.

Rs.50,000/- each u/s 468 PPC.

Rs.50,000 u/s 471PPC.

The total amount of fine is thus Rs.134, 364/-. Out of which Rs.13,364,000/- corresponds with the amount found to have been misappropriated by the appellant. The remaining Rs.100,000/- in the pay order represents the fines imposed u/s 468 and 471 PPC which in view of finality of conviction and sentences to the late appellant are also liable to be dealt with in accordance with law.

30. As regards Rs.100,000/- furnished by applicant Muhammad Haroon as ordinary surety, it is distinct from amounts paid through the pay order. The undertaking of the applicant to produce the late appellant was attached with such amount. It would have been liable to confiscation, as per law, had the applicant failed to produce the late appellant in this court after his release on bail. But it did not happen, and on account of final disposal of the appeal followed by death of the appellant, this contingency has come to an end. The said surety is, therefore, discharged.

31. The Nazir is required to ascertain the actual profit accrued on the pay order and apportion it proportionately between Rs.13,364,000/- and Rs.100,000/. The profit earned against Rs.13,364,000/- shall follow the principal amount and be applied to cover the loss (compensation) to the

company. Whereas, the profit attributable to Rs.100,000/- shall follow that portion of the fine and be dealt with in accordance with law.

32. For the foregoing reasons, the listed application is disposed of in following terms. The prayer for return of the pay order amounting to Rs.13,464,000/- with profits by the applicant is declined. The Nazir is directed to encash/release the pay order, and deposit Rs.13,364,000/- together with the proportionate profit accrued thereon to the Company's Bank Account, subject to completion of all requisite formalities and documentation. The remaining Rs.100,000/- from the pay order, together with the profit proportionately attributable thereto, shall be dealt with as fine in accordance with law and deposited with the government treasury under the appropriate head.

33. The surety amount of Rs.100,000/- along with any profit accrued thereon shall be returned to the applicant subject to his identification and verification as per rules by the Nazir.

The listed application is disposed of accordingly.

JUDGE

JUDGE

Rafiq/PA.

