

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Criminal Revision No. 99/2019**

Muhammad Irfan

**Versus**

The State.

**Petitioner by,** Mr. Aqeel Akhtar Raja, Advocate.

**State by,** Ms. Saadia Noreen Malik, State Counsel.

**Date of Decision,** 04.03.2020.

**MOHSIN AKHTAR KAYANI, J.** Through this criminal revision, the petitioner has assailed the order dated 17.07.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby surety bond is forfeited and surety amount worth Rs.2,00,000/- was confiscated in favour of state. The petitioner has also assailed the order dated 26.10.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby application filed by petitioner for appropriate order was dismissed.

2. Learned counsel for the petitioner contends that petitioner stood surety of accused Ehtisham ul Haq nominated in criminal case FIR No.165, dated 27.05.2016, U/S 302/324/147/148/427/109 PPC & 7-ATA, P.S. Khanna, Islamabad, whereby said accused after grant of post-arrest bail did not appear before the trial Court and

proceeded to UAE in connection with his employment and surety submitted by the petitioner has been forfeited vide order dated 17.07.2019, passed by learned trial Court; that petitioner has requested the trial Court to extend some time to manage the return of accused from abroad as he was in contact with the accused, who was not granted leave by his employer due to which certain delay has been caused but learned trial Court has not extended time rather passed the orders dated 17.07.2019; that petitioner filed application for appropriate order against the order dated 17.07.2019 before the trial Court with prayer that petitioner may be discharge of his bail bond obligation but said application was dismissed and amount of Rs.2,00,000/- was confiscated in favour of state as penalty vide order dated 26.10.2019; that imposition of penalty in terms of Section 514 Cr.P.C. upon the surety has to be considered with lenient view due to the efforts made by the petitioner as accused Ehtisham ul Haq put appearance before the Court and presently has joined the proceedings after submission of fresh bail bonds.

3. Conversely, learned State counsel contends that accused Ehtisham ul Haq has put appearance before the trial Court and fresh bail bonds are available on record and as such order impugned could not be recalled as proper opportunity was granted to the petitioner to produce the accused before the trial Court but he failed despite consuming considerable time; that instant petition is not maintainable as no illegality has been highlighted by the petitioner in the course of confiscation of surety amount.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner stood surety of accused Ehtisham ul Haq in criminal case FIR No.165, dated 27.05.2016, U/S 302/324/147/148/427/109 PPC & 7-ATA, P.S. Khanna, Islamabad, who left Pakistan in connection with his job in UAE and due to the said reasons petitioner could not arrange the presence of accused before the trial Court despite his best efforts and trial Court after recording the statement of Process Server initiated the proceedings against the surety/petitioner.

6. I have also gone through the provision of Section 514 Cr.P.C. which provides complete procedure and mechanism for the forfeiture of bail bonds whereby court is empowered to remit any portion of the penalty however, in this case show cause notice was issued to the petitioner who despite his best efforts could not produce the accused before the trial Court due to reasons beyond his control as accused had left Pakistan to earn his livelihood, although he was in contact with the petitioner.

7. I have gone through the order of trial Court and there is no denial that surety has made genuine efforts to arrange the presence of accused before the trial Court but could not succeed due to reasons beyond his control, although the order passed by learned Additional Sessions Judge (East), Islamabad is in accordance with law, whereby surety amount of Rs.2,00,000/- has been confiscated, when it was observed that petitioner being surety has failed to produce the accused who had already left Pakistan in connection with his job, however, there is no record to justify that accused has concealed himself from the process of court then in such scenario lenient view has to be taken and the decision taken by the trial court is harsh as compelling reasons should be treated objectively and with some leniency. Reliance is

placed upon 2014 MLD 1806 (Islam Badshah and another Vs. The State). In this backdrop this Court while exercising the powers U/S 435 read with 439 Cr.P.C. is equipped with similar powers available to the trial Court in terms of Section 514 Cr.P.C. regarding correctness, illegality and propriety of any order passed by the lower court. It has been observed that no illegality has been committed by the trial Court and the accused is now appearing before the Court, therefore, instant criminal revision is not made out and the same is hereby dismissed. However, by taking lenient view and other grounds discussed above, the imposition of fine is reduced from Rs.2,00,000/- (Rupees Two Hundred Thousand only) to Rs.20,000/- (Rupees Twenty Thousand only) as highlighted in 2011 SCMR 929 (Ali Sher Vs. The State).

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid