

IA No. 07/24 in SC No. 150/16
STATE Vs. SADIK
FIR No. 432/2016
PS New Usmanpur

08.07.2024

ORDER

1. Vide the present order, I shall dispose off the application filed by the applicant/accused u/s 440 (2) Cr.P.C. seeking reduction of surety amount of the surety bond on behalf of the applicant/accused Sadik.

2. It has been submitted by the Ld. counsel for applicant/accused that no other bail application/application seeking reduction of surety bonds filed by the applicant/accused is pending before the Hon'ble Supreme Court of India or the Hon'ble High Court of Delhi.

3. It has been submitted by the Ld. counsel for the applicant/accused that the applicant/accused was granted regular bail by this court vide order dated 27.05.2024. As per the conditions imposed in the said order, the applicant/accused was admitted to bail subject to furnishing bail bond in the sum of Rs. 20,000/- with two local sureties of like amount.

4. It has been submitted by the Ld. counsel for the applicant/accused that the application / accused belongs to a poor strata of the society. He is in JC since 05.03.2024 and in spite of being granted regular bail on 27.05.2024, he is still languishing

in jail as he has unable to procure the sureties to furnish the surety amounts.

5. It is submitted by the Ld. Addl. PP for the State that the present applicant/accused has been charged with serious offences punishable u/s 307 R/w 34 and section 25 of the Arms Act, 1959 and the matter is listed at the stage of PE as co-accused Mohd. Arif was declared a proclaimed offender and charges against him were framed u/s 174-A IPC, 1860 and the process server and arresting officers are yet to be examined. The trial as far as the present applicant/accused is concerned is at the stage of addressing final arguments and if sufficient surety is not taken, then the present applicant/accused may abscond.

6. It is trite law that the trial court has to balance and correlate the imperative of setting prisoners at liberty pursuant to the bail order and securing their fundamental rights with the demand of producing adequate sureties as an assurance of their regular attendance at the trial and as a deterrence against the possibility of them fleeing from the justice. It is equally important that the trial court should also factor the socio-economic background of the prisoner while fixing the number and amount of sureties. At times, persons belonging to extremely poor background, simply do not have the requisite social standing or financial clout to arrange multiple sureties, therefore, at times, the UTPs belonging to poor economic strata or socially marginalized segments of the society may not be set at liberty despite being enlarged on bail. The purpose of sureties is certainly dissuasive in intent, however,

setting higher surety amounts and number of sureties may at time have punitive impact instead. The Hon'ble Supreme Court of India had dealt with the issue of constitutional promise of equality for all citizens and a realistic understanding of the socio economic landscape of the country underlaying the concept and rationale of the scope of sureties in the cases of bail in ***Moti Ram and Ors. Vs. State of Madhya Pradesh*** (1978) 4 SCC 47. Furthermore, in the landmark decision of ***Hussainara Khatoon Vs. State of Bihar*** AIR 1979 SC 1360 had mandated the consideration of the roots of an accused in the community so as to advocate a mool fact based approach in tune with the social realities to serve justice as follows:

“To determine whether the accused has his roots in the community which would deter him from fleeing, the court should take into account the following factors concerning the accused,

- 1. The length of his residence in the community.*
- 2. His employment status, history and his financial condition,*
- 3. His family ties and relationship*
- 4. His reputation, character and monetary condition,*
- 5. His prior criminal record including any record of prior release on recognizance or on bail,*
- 6. The identity of responsible members of the community who would vouch for his reliability,*

7. *The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non appearance, and*
8. *Any other factors in relating the ties of the accused with the society.”*

7. In the background of the above stated case laws, the fact that present applicant/accused has remained in custody even after expiry of period of 45 days after granting him regular bail, especially when it has been averred on behalf of the applicant/accused that the present applicant/accused does not have any other family members except for his wife and children and considering his poor background, his wife is not able to arrange the sureties and that she had attempted several times to take the loan, however, she was not able to get the same, this court is of the view that it is a fit case to exercise its power u/s 440 (2) of Cr.PC and the number of sureties are also reduced from two sureties to one surety in the sum of Rs. 10,000/-.

8. With these conditions, the present application moved under section 440(2) Cr.P.C on behalf of **applicant/accused Sadik** stands disposed off. The other conditions imposed by this court from (ii) to (vi) of order dated 27.05.2024 shall remain in force and the accused shall be released on bail upon furnishing a personal bond of Rs. 10,000/- alongwith one surety of the like amount to the satisfaction of this court.

9. It is needless to say that nothing stated herein shall tantamount to an opinion or expression on the merits of the case.

10. Copy of this order be sent to concerned Jail Superintendent.

11. Copy of this order be given dasti to the parties.

11. Application stands disposed off accordingly.

(ATUL AHLAWAT)
ASJ (FTC)/North-
East/KKD Courts/
Delhi/08.07.2024