

ORDER

This is an application filed by the respondent, Mohammed Sadiq, who stood as surety for Accused No. 2, Sayed Salman @ Pailwan under Section 446(3) of the Criminal Procedure Code, 1973 ("Cr.P.C.").

2. In the application it is asserted that the present proceedings were initiated pursuant to an order of this Court directing forfeiture of the bond executed by the respondent, who had stood as surety for Accused No. 2, namely Syed Salman @ Pailwan, in S.C. No. 7/2017. Consequently, the present case came to be registered.

3. In the said proceedings, the respondent appeared before this Court and filed an application seeking exemption and indulgence from payment of the entire forfeited bond amount. The respondent submits that he is a poor person and possesses no property other than the land that was offered as surety at the time of furnishing bail. He earns his livelihood solely from the income derived from the said land and has no other source of income or financial resources.

4. The respondent further submits that he was not personally acquainted with Accused No. 2 in S.C. No. 7/2017. He had agreed to stand as surety only at the request of his previous advocate. The respondent is an illiterate person and had no proper knowledge regarding the nature and implications of the surety documents and certificates produced before the Court.

5. It is further submitted that the failure to secure the presence of the accused before the Court within the stipulated time was not intentional, deliberate, or motivated by any malafide intention on the part of the respondent. The respondent is not a professional surety and had not stood as surety for the accused with any wrongful or ulterior motive.

6. The respondent respectfully submits that if this Court is pleased to reduce the forfeited bond amount, no prejudice, loss, or hardship would be caused to the prosecution or any other party. On the other hand, if the respondent is directed to pay the entire bond amount without any reduction, he would be subjected to severe financial hardship and irreparable loss, and his means of livelihood may be seriously affected.

7. Under these circumstances, the respondent humbly prays that this Court may be pleased, in the interest of justice, equity, and good conscience, to reduce the forfeited bond amount and pass such other appropriate orders as it deems fit and proper in the facts and circumstances of the case.

8. It has been brought to the Court's attention that Accused No. 2, Salman @ Pailwan, has absconded, leading to the initiation of criminal miscellaneous proceedings against both Accused No. 2 and the sureties, for forfeiture of the surety bond amount of Rs. 1,00,000/-.

9. Upon considering the facts and circumstances of the case, it is clear that Accused No. 2 has failed to appear before the Court as required, breaching the conditions of the bond. As a result, Mohammad Sadiq as one of the surety, has defaulted in fulfilling his obligation to ensure the presence of the accused. Under Section 446(3) Cr.P.C., the Court is vested with discretion to forfeit the bond and recover the bond amount from the surety. However, the same provision also empowers the Court to reduce the penalty amount if it finds sufficient cause or considers it appropriate in the interest of justice.

10. In the present case, the surety, Mohammad Sadiq, has not provided adequate reasons for the non-appearance of the accused, but it is observed that the surety has no history of previous defaults, and no materials are there to suggest any mala fide intent or collusion on his

part in the accused's absconding. Considering the financial constraint that the forfeiture of the entire bond amount may impose on the surety, the Court deems it reasonable to exercise its discretion and reduce the penalty amount, in line with the principles of fairness and proportionality.

: ORDER :

1. The bond executed by Mohammad Sadiq, the surety for Accused No. 2, Sayed Salman @ Pailwan, is hereby forfeited under Section 446(3) of Cr.P.C.
2. The penalty amounts payable by the surety, Mohammad Sadiq, is reduced from Rs. 1,00,000/- to Rs. 35,000./- (Rupees Thirty Five Thousand only).
3. Mohammad Sadiq is directed to deposit the reduced penalty amount of Rs.35,000/- within 30 days from the date of this order.
4. Failure to deposit the reduced amount within the specified time may result in further legal action for recovery as per law.

For compliance of the order by

(Doddegowda K.)

III Addl. District & Sessions Judge,
Hassan.

bond forfeited format

Case called out. Accused and adv
for accused absent. No representation.
Since the accused jumped the bail
conditions, the bail bond executed by
accused is hereby forfeited in favour of
the state.

Office is directed to register
Crl.Misc against the accused and the
sureties.

Issue NBW against Accused
returnable by 25.09.2023.