

No.R(J)/100/2022

High Court of Karnataka,
Bengaluru,
Date: 04th July 2022

CIRCULAR

The Hon'ble Court has passed the order on 01.04.2022 in Criminal Appeal No. 1944 of 2021, and same is enclosed along with this Circular.

Therefore, in view of the observations made by this Hon'ble Court in Criminal Appeal No. 1944 of 2021, the Trial Courts of the State are hereby directed to be more vigilant while accepting the surety in cases which are detrimental to the society at large, especially, the offences like, Theft, Robbery, Dacoity and Murder and also the offences relating to women and children. Any lapse in this regard will be viewed seriously.

BY ORDER OF THE HON'BLE CHIEF JUSTICE

Sd/-
(JAISHANKAR)
REGISTRAR (JUDICIAL)

To:

- 1. The Principal District and Sessions Judge of Karnataka State with a request to circulate the same to all the Courts coming under their jurisdiction.**
2. The Additional Registrar General, High Court of Karnataka, Benches at Dharwad and Kalaburagi
3. The Central Project Co-ordinator with a request to web host the Circular.
4. P.S. to Hon'ble the Chief Justice.
5. All the Private Secretaries to Hon'ble Judges
6. All the PAs to Registrars with instructions to bring to the notice of the concerned Registrars about the Circular.
7. Group 'A' officers working on judicial side.
8. Office Copy.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01st DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE S. RACHAIAH

CRIMINAL APPEAL NO.1944 OF 2021

BETWEEN:

CHANNIAIAH,
S/O DODDA DASAIAH,
AGED ABOUT 46 YEARS,
R/AT NO.268, 2ND MAIN,
6TH CROSS, K.P. AGRAHARA,
MAGADI ROAD, BANGALORE – 562 160.

... APPELLANT

(BY SRI RAJU C.N., ADVOCATE)

AND:

STATE BY HANUMANTHANAGARA POLICE,
BANGALORE, REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BANGALORE – 560 001.

... RESPONDENT

(BY SMT. RASHMI JADHAV, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 449(2) CR.P.C., PRAYING TO SET ASIDE THE ORDER PASSED BY THE L ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN SPL.C.C.NO.231/2017 DATED 01.12.2021 AND ALLOW THE APPEAL FILED BY THE APPELLANT.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 11.03.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

The present appeal is filed by the appellant who stood as surety to the Accused No.6 in Spl.Case.No.231/2017 before the L Addl. District and Sessions Judge at Bengaluru for the offence under section 397 of IPC.

2. The Appellant has filed an application under section 446(3) of Cr.P.C. seeking to reduce the bond amount from Rs.1,00,000/- to a reasonable amount.

3. Sri.Raju C.N., learned counsel for the Appellant contended that, the Appellant has stood as surety to Accused No.6 and the accused No.6 has absconded from the case. In spite of NBW having been issued to the Accused No.6, the Respondent - State has not traced the Accused No.6 and even for the surety also he was not available. Hence, the trial court registered the miscellaneous case and directed surety of accused No.6 / appellant to deposit Rs.40,000/-, to discharge the liability of the surety i.e. Appellant.

Further the Learned counsel submits that, the Appellant is a very poor person and in spite of making all efforts to search accused No.6, he is unable to trace him. The Appellant is ready to pay the reasonable bond amount, if it is reduced by this Court.

In support of his contention, the learned counsel for the Appellant relied on an unreported judgment of the Co-ordinate Bench of this Court in Criminal Appeal No.275/2019 decided on 30.07.2019, wherein this court reduced the bond amount.

4. Per Contra, Smt. Rashmi Jadhav, learned High Court Government Pleader submits that, the Appellant stood as surety to Accused No.6, who had committed an offence under section 397 of IPC, which is heinous and scar to the society at large.

Learned HCGP further submits that, the Appellant had executed the bail bond agreeing to pay the bond amount, in case, if the accused No.6 not appearing before the court. The trial Court, considering the submissions, has already reduced the bond amount, and no leniency could be shown to the Appellant. Hence, she sought to dismiss the appeal.

5. Heard both the counsel and perused the record.

6. The point that arises for my consideration is:

"Whether the Appellant has made out grounds to interfere with the order of the trial court?"

7. As could be seen from the order sheet, the trial court after having considered the facts and circumstances of the case, has reduced the bond amount from Rs.1,00,000/ to Rs.40000/-. No order in lieu of default payment of bond amount has been passed.

8. The alleged offence is heinous in nature and the accused is not traceable in spite of court having issued NBW. This development is very shocking to the society at large. The offence alleged to have been committed by the accused No.6 and his abscondence leads to multiplicity of proceedings. The Police officials, even though they are competent to trace the accused, could not trace the accused No.6 in this case. Jumping the bail not only leads to stall the proceeding, but also, delay the process of rendering the justice to the needy.

9. If the accused, who has committed offences like Theft, Robbery and Dacoity and also the offences against the Women and children, are left scot-free without tracing them to face the trial, it is very difficult to keep the society at large to be at peace and happy.

10. Now, coming to the Judgment of Co-ordinate Bench of this court in **Criminal Appeal No.275/2019 dated 30.07.2019** this court has opined that, when the FLW is issued against the surety in terms of section 446 of the Code of Criminal Procedure, considering the poverty of the Surety, leniency be granted to the surety.

11. On the contrary, in the present case, the opportunity to pay the reduced bond amount is granted to the surety and no such order of sale – proceedings has been passed. Hence, the judgment of Co-ordinate Bench is not applicable to the present case.

12. Of course, the Courts can exercise the discretionary power to reduce the bond amount, provided that, the accused is

traced and produced before the court. Here in this case, the accused is alleged to have committed heinous offence and offered surety for his appearance on all hearing dates and failed to appear before the court.

13. The Court issued the proceedings under sections 82 and 83 of the Code of Criminal Procedure against the accused No.6 and bail bond of the surety is cancelled and directed the surety to pay the fine amount of Rs.40,000/- against which appeal is filed. Therefore, the surety comes to the court and pleaded his ignorance about the whereabouts of the accused No.6 and seeking to reduce the bond amount, which is highly deprecated and in such circumstances, the surety is not entitled for any leniency. *Courts are the guardians of the society and the society expects the courts to be more vigilant while rendering the justice to the needy. The justice required to be reached to the needy not only speedily but also effectively. The offences which are considered as heinous are required to be dealt with more stringently and with great circumspection.*

14. In the light of the observation made above, the point arose for consideration in this appeal is answered in the **negative** for the reason that, the Appellant has not made out any ground to interfere in the Appeal. Hence, I proceed to pass the following:

ORDER

- a) The appeal filed by the appellant stands dismissed.
- b) Appellant is directed to pay the reduced bond amount within a period of one month from the date of this order, in default, the same may be recovered in terms of land revenue as envisaged under the provision of section 421 of Cr.P.C.
- c) Registry is directed to issue circular to the Trial Courts of the State to be more vigilant while accepting the surety in cases which are detrimental to the society at large, especially, the offences like, Theft, Robbery, Dacoity and Murder and also the offences relating to women and children.

**Sd/-
JUDGE**

Bss.