

Neutral Citation No. - 2023:AHC-LKO:46043

Reserved on 23.5.2023

Delivered on 14.7.2023

Case :- CRIMINAL APPEAL No. - 568 of 2003

Appellant :- Amar Nath

Respondent :- State of U.P.

Counsel for Appellant :- Vimal Kishore Verma

Counsel for Respondent :- Govt. Advocate

Hon'ble Manjive Shukla, J.

1. Heard Mr. Harsh Verma, Advocate holding brief of Mr. Vimal Kishore Verma, learned counsel for the appellant and learned Additional Government Advocate appearing for the State.
2. Appellant through this appeal has challenged the order dated 21.2.2003 passed by Additional Sessions Judge/F.T.C. No.29, Barabanki in Criminal Misc. Case No.12/2002.
3. From the record of the case it appears that Bharat son of Nanhu, resident of Shekhupur, P.S. Mohammadpur Khala, District Barabanki and the appellant i.e. Amar Nath son of Ram Lakhan, resident of 9/590, Indira Nagar, Lucknow, permanent resident of Imlipur, P.S. Mohammadpur Khala, District Barabanki furnished surety for release of accused on bail in **Sessions Trial No.78 of 1999 (State vs. Ramu)** which was for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
4. From the record it further transpires that on 3.9.2002 accused Ramu disappeared and did not appear before the trial court and as such, for his arrest many times non bailable warrants were issued and finally procedure provided under Sections 82 and 83 CrPC

was put in action. Thereafter, the accused surrendered before the trial court on 6.1.2003.

5. Since the accused disappeared and was not appearing before the trial court, as such under Section 446 CrPC a notice was issued to surety Amar Nath (appellant) which was served on him on 5.9.2002 but neither he appeared before the court concerned nor he made any effort for surrender of the accused and therefore, vide order dated 23.12.2002 surety bond was forfeited in favour of the State and further notice was given to the appellant to appear before the court on 23.1.2003 and to explain as to why the value of surety bond i.e. Rs.25,000/- may not be recovered from him. Thereafter, the appellant appeared before the court on 6.1.2003 and the same day the accused also surrendered before the court. The appellant filed an application on 7.3.2003 wherein he mentioned that since the accused has already surrendered before the court on 6.1.2003, therefore the amount of surety bond i.e. Rs.25,000/- may not be recovered from him.

6. Learned trial court has considered all the facts of the case and found that from the record it transpires that the accused himself has surrendered before the court and the said surrender was not due to any effort made by the appellant, therefore sureties Bharat and Amar Nath (appellant) were directed to pay Rs.20,000/- each as fine.

7. In the aforesaid circumstances, the appellant has filed the present criminal appeal against the order dated 21.2.2003 passed by Additional Sessions Judge/F.T.C. No.29, Barabanki in Criminal Misc. Case No.12/2002.

8. Learned counsel for the appellant has vehemently argued that since the accused has already surrendered before the trial court on 6.1.2003, therefore there was no occasion for the trial

court to pass an order which is under appeal thereby directing the appellant to deposit Rs.20,000/- as fine.

9. On the other hand, learned Additional Government Advocate appearing for the State has submitted that since the appellant did not make any effort for surrender of the accused, therefore surety bonds were forfeited and vide order dated 21.2.2003 the trial court has directed the appellant to deposit Rs.20,000/- as fine, which is perfectly legal.

10. I have considered the submissions advanced by the learned counsel for the parties and I find that the accused by misusing the bail disappeared on 3.9.2002 and did not appear before the trial court but later on he surrendered before the court on 6.1.2003 i.e. after about four months. Since the accused himself has surrendered before the trial court within a period of four months, therefore inference drawn by the trial court that in the aforesaid surrender no effort was made by the appellant, does not appear to be reasonable.

11. In view of the aforesaid, since the accused has already surrendered on 6.1.2003, I find that the order dated 21.2.2003 passed by Additional Sessions Judge/F.T.C. No.29, Barabanki in Criminal Misc. Case No.12/2002, is unsustainable in the eyes of law. Accordingly, this Court hereby sets aside the aforesaid order dated 21.2.2023.

12. The appeal is accordingly **allowed**.

13. Let lower court record along with certified copy of this order be sent to the trial court concerned for necessary compliance.

Order Date :- 14.7.2023

Salim