

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5204 of 2018

ORDER :

Heard.

2. Leave about the fact that against conviction judgment for the offence punishable under Section 138 of N.I.Act, the petitioner/appellant filed Criminal Appeal No.593 of 2016 and obtained suspension of sentence pending the appeal under Section 389 Cr.P.C. with conditions and pursuant to which, when failed to attend, Non-Bailable Warrant (NBW) was issued and ultimately taken to custody in enforcement of NBW. Among two contingencies, one is the fact covered by Section 436(2) Cr.P.C. of once even in a bailable offence NBW issued and executed it tantamounts to a non-bailable offence after remand to custody by execution of NBW as per the wording of Section 436(2) Cr.P.C. However, the fact remains that pending appeal there is a suspension of sentence and that order is not cancelled from non compliance; bonds furnished at best not complied with, the remedy is to impose penalty on the bonds and obtain fresh bonds. In either case among two options, the second option availed by petitioner/accused by moving a non-bailable application under Section 437 Cr.P.C. before the learned appellate Judge. The imposing of the condition of release on personal bond with two sureties of Rs.3,00,000/- is onerous, thereby reduced to a bond of Rs.25,000/- (Rupees twenty five thousand only) with two sureties on a lie sum.

3. Accordingly, the criminal petition is allowed to that extent. It is made clear that the learned Sessions Judge need not insist the presence of the petitioner/appellant in disposal of the appeal under Section 386 read with 390 Cr.P.C. as laid down by the Three-Judge Bench of the Apex Court in **Bani Singh v. State of Uttar Pradesh**¹, but for disposal of the appeal even in the absence of the parties on merits. Thereby, the learned Sessions Judge shall dispose of the appeal on merits even if the parties failed to attend, rather than issuing NBW and keeping the matter pending following the above expression of the Constitution Bench.

Miscellaneous petitions pending, if any, shall stand closed.

11th June 2018.

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Dr. B. SIVA SANKARA RAO, J

¹ 1996 AIR SC 2439