

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 868 of 2019**

- Sharad Jain, S/o Late Mangi Lal Jain, aged about 50 Years, R/o Village Pipariya, Police Station & Tahsil Khairagarh, District-Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through District Magistrate, District Rajnandgaon Chhattisgarh.

---- Respondent

For the Appellant : Mr. T.K. Jha, Advocate.

For the State/Respondent : Mr. Arun Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board**17/06/2019**

1. With the consent of parties, this appeal is being heard finally at the motion stage itself.
2. This appeal has been brought under Section 449(ii) of CrPC challenging the order dated 3.5.2019 passed by the Court of Additional Sessions Judge, Khairagarh, District-Rajnandgaon in Sessions Trial No.19/2017.
3. It is submitted by learned counsel for the appellant that appellant was surety to the accused in Sessions trial and he had given appearance before the Court on the process issued in this respect on 3.5.2019. It is submitted that without

affording any opportunity to show cause the appellant was directly ordered to make deposit of forfeited amount of surety Rs.25,000/-, which is clearly in-violation of the principles of natural justice and provisions of Section 446 of CrPC. Hence, it is prayed that appeal be allowed.

4. Learned State counsel opposes the submissions made in this respect, it is submitted that the Court has option under Section 446(i) of CrPC either to call upon person bound by such bond to pay penalty thereof or to show cause why it should not be paid. Therefore, there is no infirmity in the order passed.
5. I have heard learned counsel for the parties and perused the record of trial Court including the impugned judgment.
6. The appellant took surety for accused Ashish Chhajaid in S.T. No.19/2017 on the basis of the order passed by this Court in MCRCA No.606 of 2019. Accused failed to give appearance before the Court below because of which the appellant was summoned and has been ordered to make payment of forfeited amount without affording him any opportunity to show cause.
7. Taking into consideration the provisions of Section 446 of CrPC, I feel inclined to allow this appeal. Accordingly, the appeal is allowed at motion stage itself and order dated 3.5.2019 passed by Court below is set aside. The trial Court

concerned is directed to afford an opportunity to the appellant to show cause before passing any order for deposit of any forfeited amount.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha