

LAW OF BOND

UNDER THE CODE OF CRIMINAL PROCEDURE, 1898

[Justice ® Dr. Munir Ahmad Mughal]

Introduction

Requiring a person to execute a bond, with or without sureties for his appearance in the Court is one of the six methods¹ of securing attendance of a person in court.

Definition of the word “bond”:

¹ The six methods or modes of production of an accused before court are: (i) Summons; (ii) Warrant; (iii) Warrant in lieu of summons; (iv) Proclamation of an absconder; (v) Attachment of his property; and (vi) Bond, with or without sureties, to appear before a Court on a certain date.

A bond is not defined in the Code of Criminal Procedure, 1898.

Literally speaking a bond is an agreement, especially a promise. If someone says their word is their bond, they mean they will definitely do that they have promised.²

In Urdu³ a bond is called a “Muchalka/مچلکہ”⁴ i.e. a recognizance. It is a document. It is an instrument. It is a paper in writing. It is a deed.

A bond is a written agreement executed⁵ by a person whose appearance is required in a Court of law that he will

² Collin’s Plain English Dictionary, Harper Collins Publishers: 1996, p. 71.

³ Urdu is the National language of Pakistan. Article 251 of the Constitution of Islamic Republic of Pakistan, 1973 says: National language.-- (1) The National language of Pakistan is Urdu and arrangements shall be made for its being used for official and other purposes within fifteen years from the commencing day. (2) Subject to clause (1), the English language may be used for official purposes until arrangements are made for its replacement by Urdu. (3) Without prejudice to the status of the National language, a Provincial Assembly may by law prescribe measures for the teaching promotion and use of a Provincial language in addition to the national language.”

⁴ مچلکہ

⁵ Written in a formal legal manner.

appear before the Court as and when so required on the date and place as directed, and in case he fails to appear on any date of hearing, he and his sureties shall become liable for the consequence. i.e. the amount of bond shall stand confiscated⁶ in favour of the State and bail shall stand cancelled and warrant of arrest will again be issued against the accused.

A bond may be without sureties called the personal bond or a bond with sureties.

The amount and number of sureties⁷ to be furnished by such person is according to the discretion of the court. Like all other discretions this discretion is also to be exercised judiciously⁸ and not

⁶ Taken away, recovered by the State as having become the amount belonging to the state.

⁷ A surety is a person who undertakes the obligation either to produce a person before the Court at time and date fixed or takes the obligation to pay a certain specified amount agreed to in the surety bond executed by him in accordance with law.

⁸ Reasonably, fairly.

whimsically⁹. The amount of surety must not be too excessive to make it beyond the capacity of such person nor too meagre that the very purpose of the bond taking is defeated and it seems a mockery of law. Exercise of discretion must be reasonable and just.

WHICH OF THE PROVISIONS DEAL WITH THE MODE OF BOND IN THE CODE OF CRIMINAL PROCEDURE, 1898? ¹⁰

⁹ Arbitrarily or capriciously or without making it a serious point of consideration.

¹⁰ It is also called Act V of 1898. It means it was the 5th statute on the list of the laws passed by the Legislature in India in the year 1898. When Indian sub-Continent was divided into two dominions by the Indian Independence Act, 1947 called India and Pakistan this Act empowered the two legislatures to adapt the laws already existence. The Code of Criminal Procedure, 1898 was one among those already existing statutes. After that it was amended by in its application to West Pakistan by the Code of Criminal Procedure (Amendment), 1964 whereby jury system was completely abolished. Many more amendments were made in the Code by the Law Reforms Ordinance, 1972. The Code was further amended by the Law Reforms Ordinance, 1996. In order to bring certain provisions of the Code in conformity with the injunctions of the Holy Qur'an and Sunnah of the Messenger of Allah (صَلَّى اللهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ) the Criminal Law (Amendment) Ordinance, 1990 commonly known as the Qisas and Diyat Ordinance was enforced by which section 345 of the Code was amended, section 402 was added and column of the Second Schedule relating to offences falling under Ss, 302, 307, 309, 326, 329 and 336 PPC were made compoundable. Then came the Criminal Law Amendment Act, 1997. Then came the Criminal Law Amendment Ordinance, 2001 (No. XXXVII of 2001). The Judiciary was separated from the executive. The word Magistrate was given the meaning as a Judicial Magistrate. The judicial duties of the District Magistrate were given to the District Sessions Judge. Amendments were further made in the Code by the Act I of 2005, Act, VI of 2006.

“ 91. POWER TO TAKE BOND FOR APPEARANCE:

When any person for whose appearance or arrest the officer presiding any Court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond with or without sureties.”

“92. ARREST BY BREACH OF BOND FOR APPEARANCE.

When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear , the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him.”

Is power of arrest absolute?

Power of arrest is never absolute. It is a situational power which can be exercised on existence of certain circumstances. Power of arrest cannot be exercised on the ground that the accused is being tried and is neither in jail and also has not been granted bail.¹¹

Provisions as to bonds are also given in sections 513 to 516 the Code of Criminal Procedure, 1898.

DEPOSIT INSTEAD OF RECOGNIZANCE:

Section 513 of the Code of Criminal Procedure, 1898 states:

When any person is required by any court or officer to execute a bond with or without sureties such court or officer

¹¹ 1991 ALL Civ. J. 451.

may, except in the case of a bond for good behaviour permit him to deposit a sum of money or government promissory notes to such amount as the court or officer may fix, in lieu of executing such bond.

What is the Procedure on forfeiture of bond?

A comprehensive procedure is made available in section 514 of the Code of Criminal Procedure, 1898. It reads:

“514. Procedure on forfeiture of bond.

(1) whenever it is proved to the satisfaction of the Court by which a bond under the Code has been taken, or of the Court of magistrate of the first class,

or when the bond has been forfeited, the court shall record grounds of such proof, and may call upon any person by such bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it, and it shall authorize the attachment and sale of any movable property belonging to such person without such limits, when endorsed by the District Officer (Revenue) within the local limits of whose jurisdiction such property is found.

(4) if such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant of imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under section 107 or section 118 is convicted of an offence the commission of which constitutes a breach of the conditions of this bond, or of a bond executed in lieu of his bond under section 514-B, a certified copy of

the judgment of the Court by which he was convicted of such offence may be used as the evidence in proceedings under the section against his surety, or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

COMPARATIVE STUDY OF LAW OF BOND

As for section 514 in Indian Jurisdiction in the case cited as AIR 1957 Supreme Court 587 it was observed that section 514 Cr. P. C. refers to two classes of bonds, firstly, a bond under the Code of Criminal Procedure, 1898 taken by the Court, and secondly, a bond for appearance before the Court.

The first class (of bonds) is subject to two limitations, namely,-

- (i) The bond must be taken by a Court;
and
- (ii) The bond must be taken under the Code of Criminal Procedure, 1898.

Bond for the second class must be for appearance before a Court. The words “such bond” refer to the words “bond under this Code” occurring in the first paragraph of sub-section (1) of the Code of Criminal Procedure, 1898 and includes only bonds executed under this Code either in favour of the State or Government.

- A bond executed in favour of Police is not actionable under section 514 of the Code of Criminal Procedure, 1898.

- A bond taken not by Court but by a particular office such as Procurement Inspector is not actionable under section 514 of the Code of Criminal Procedure, 1898.¹²
- A bond for suspension of sentence in favour of executive officer of the court is not actionable under section 514 of the Code of Criminal Procedure, 1898.
- A bond taken under the Opium Act is not actionable under section 514 of the Code of Criminal Procedure, 1898.
- A bond taken under the Prisoners Act for appearance before the Jail Authorities is not actionable under section 514 of the Code of Criminal Procedure, 1898.

¹² See AIR 1957 Supreme Court 587; Air 1976 Supreme Court 680; AIR 1952 Supreme Court 405

EXTENT OF LIABILITY OF SURETY:

In the case cited as 2004 SCMR 563 the honourable Supreme Court of Pakistan observed:

“Once the accused appears or his appearance is caused by the surety along with the application making request to discharge the surety bond, it is not the responsibility of the surety to again produce the accused person before the Court. Decision in such like cases is required to be taken expeditiously, because if time is allowed to accused, he is bound to take undue benefit of the same.”

IS SURETY’S FINANCIAL CONDITION A BAR TO FORFEIT THE BAIL BOND IN FULL?

In the case cited as 2005 Yearly Law Reporter 541 it was held that after

undertaking the liability it would not lie in the mouth of a surety that on account of his financial condition he cannot pay amount of bond executed by him and that he stood surety out of benevolence and without any monetary gain. There is no legal embargo that amount of bail in full cannot be forfeited.¹³

WHEN A BOND CANNOT BE FORFEITED?

A bond cannot be forfeited where the failure to appear is due to causes beyond the control of the parties as in the following cases:

(i) Act of God as death of the accused.¹⁴

¹³ See also 2005 Pakistan Criminal Law Journal page 269.

¹⁴ AIR 1915 Madras 114.

(ii) Act of Parties as suicide committed by the accused.¹⁵

(iii) Other causes as the arrest of the accused on the very date when he was to appear under the bond.¹⁶

IN AMERICAN JURISDICTION AND PAKISTANI JURISDICTION: WHAT IS RELEASE ON BAIL BOND:

WHAT IS RELEASE ON OWN RECOGNIZANCE:

Where the person required to appear in the Court is not asked to furnish sureties

¹⁵ Ibid.

¹⁶ AIR 1925 Patna 389.

and his own bond is considered sufficient, it is called own recognizance.

A bail bond is a three party contract which involves state, accused and surety and under which surety guarantees State that accused will appear at subsequent proceedings.

A bond is a written undertaking, executed by the defendant or one or more sureties that the defendant designated is such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render him amenable to the orders to do so, the signers of the bond will pay to the court (i.e. forfeit) the amount of

money specified in the order fixing bail.¹⁷

SECTION 91 AND SECTION 111 THE CODE OF CRIMINAL PROCEDURE, 1898 :

Section 91 the Code of Criminal Procedure, 1898 may be availed of in security proceedings till an order under section 111 Cr. P. C. is drawn up. But once an order is drawn up under section 111 of the Code of Criminal Procedure, 1898 the Magistrate has to act under section 112, 113m and 114 of the Code.

ESSENTIAL REQUIREMENTS REGULATING THE PROCEDURE OF FORFEITURE OF BOND UNDER SECTION 514 OF THE

¹⁷ Black's Law Dictionary, Henry Campbell Black 6th ed. St. Paul, Minn West Publishing Co, (1990) p.140; Federal R. Crim. P. 46; 18 U.S.C.A. # 3141 et seq.

CODE OF CRIMINAL PROCEDURE, 1898:

- (1) It must be proved to the satisfaction of the court that a bond has been forfeited.**
- (2) The Court must record grounds for such proof of forfeiture.**
- (3) Court must issue show cause notice to the surety as to why the Penalty should not be paid by him for such breach.**
- (4) Where sufficient cause is not shown by the surety or where the penalty is not paid, the Court may proceed to recover the same.**
- (5) The recovery can be made by issuing a warrant for the attachment and sale of the**

movable property belonging to the surety.¹⁸

(6) The procedure is mandatory and must be taken step by step as contemplated and enjoined by section 514 of the Code of Criminal Procedure, 1898.¹⁹

¹⁸ 1996 Pakistan Criminal Law Journal 860.

¹⁹ 2001 Pakistan Criminal Law Journal 35 and also 2003 Pakistan Criminal Law Journal 347.