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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 1308/2015

FIRASAT HUSSAIN

..... Appellant

Through: Mr.Harsh Prabhakar (DHCLSC)
with Mr.Dhruv Chaudhary &
Mr.Adeeb Ahmad, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, APP for State.
Insp.Jitendra Singh SI Avneesh PS
Jagat Puri.
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Abhinav Bhardwaj, Adv.
for UOI.
Mr.Tushar Sannu, Standing
Counsel with Mr.Naveen Bhati &
Ms.Karishama Rajput, Advs. for
IHBAS.
Mr.Jawahar Raja, Amicus Curiae
with Ms.Aditi Saraswat,
Ms.Varsha Sharma & Mr.Parth
Goyal, Advs.
Mr.Sumer Kumar Sethi with
Ms.Dolly Sharma, Advs. for
DSLISA.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.10.2023

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1. During the pendency of the appeal, a medical report dated 03.03.2018 of the appellant was received before this Court from the

CRL.A. 1308/2015

Page 1 of 5



Director, Institute of Human Behaviour & Allied Sciences (IHBAS) stating that the appellant was diagnosed as a case of Dysthymia with Severe Depressive Episode with Lumbosacral Radiculopathy with Benzodiazepine dependence syndrome. On appropriate treatment, appellant showed significant improvement in depressive and behavioural symptoms at that point of time. The communication ended by stating that *“currently patient is behaviourally stable and can be managed on out-patient basis”*.

2. This court on 12.12.2017 considered the circumstances of the appellant who despite being acquitted could not be released as he was not able to furnish the bond in terms of Section 437A of Cr.P.C. Accordingly, Mr. Jawahar Raja, Advocate, was appointed as Amicus Curiae to assist the Court on the interpretation of Section 437A Cr.P.C. regarding the requirement by an accused who is acquitted to execute the bail bonds with sureties anticipating further appeal in a higher Court and also on the consequential directions that can be issued.

3. This Court vide order dated 06.03.2018 observed as under:

“2. The Court is of the view that the situation should be reviewed after two months. The Court appreciates the efforts being made by IHBAS in this regard. A fresh status report will be sent by the Director, IHBAS to this Court on the next date of hearing.

3. On the aspect of examining the vires of Section 437-A Cr. P.C, the Court directs notice to be issued to Union of India through its Standing Counsel. Mr Anil Soni, CGSC accepts



notice. The Registry will supply Mr. Soni a complete set of papers forthwith.

4. Mr. Jawahar Raja, the learned Advocate appointed as amicus curiae has not been appearing in the matter. The Registry will ensure that a complete set of the paper book is served upon him and that he is also given notice (without process fee) of the next date of hearing.”

4. Learned counsel appearing on behalf of respondents/Union of India submits that new Criminal Laws have been introduced in the Parliament and thereafter sent to Select Committee which is pending for further consideration. The issue raised before this Court is that in case an accused is acquitted of the charges tried against him, however, on acquittal, he has to furnish personal bond with surety bond as per Section 437A Cr.P.C. In some cases, if an accused fails to furnish the surety, he is forced to continue to remain in jail despite his acquittal due to non-furnishing of surety. Therefore, vide order dated 06.03.2018, Union of India was directed to examine the *vires* of Section 437A Cr.P.C.

5. Learned counsel for the respondents submits that new Criminal Laws are under consideration which will answer the issue raised before this Court.

6. A copy of new Criminal Laws has been produced before this Court by learned Standing Counsel appearing for the Union of India, who submits that Section 483 of New Criminal Laws is taking care of the issue pending before this Court, whereby it reads as under:

“483. (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate



Court, as the case may be, shall require the accused to execute bond or bail bond, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bond shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 493 shall apply.”

7. We have perused the aforesaid section and are of the opinion that even Section 483 of the New Criminal Laws does not resolve the issue which has been raised *suo moto* by this Court. The aforesaid Section stipulates that bail is required by the accused to appear before next Appellate Court and the Court who is trying the offence or the Appellate Court, as and when such court issues notice in respect of any appeal or petition filed against the judgment of the respective court, shall “*require the accused to execute bond or bail bond*”. In the aforesaid section, the word ‘*shall*’ means “*it is mandatory for the accused to furnish bail bond with surety*”.

8. Therefore, we suggest that the Select Committee should replace the word ‘*shall*’ with ‘*may*’ and replace the word ‘*bail or bail bond*’ with ‘*personal bond with or without surety*’.

9. Though the new Criminal Laws are under consideration before the Select Committee and already put up before the Parliament but it may take some time for the Criminal Laws to be modified, therefore, in the meanwhile, we hereby direct the learned trial courts that in cases relating to Section 437A, the word ‘*shall*’ shall be read as ‘*may*’ and the word



'bail or bail bond' shall be read as *'personal bond with or without surety'*.

10. Pertinently, the appeal was allowed vide order dated 27.07.2022, therefore, in view of above directions, no further order is required to be passed in the main Criminal Appeal. The Reference is answered accordingly.

11. Copy of this order be provided to the Principal District & Sessions Judges who shall get this order circulated to all the Judicial Officers of their Districts.

12. Copy of this order shall also be sent to the Select Committee for consideration.

SURESH KUMAR KAIT, J

NEENA BANSAL KRISHNA, J

OCTOBER 03, 2023

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