



2026:AHC:61525

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2960 of 2026

Kalaram

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ajay Kumar
Counsel for Respondent(s)	:	G.A.

Court No. - 90

HON'BLE RAJ BEER SINGH, J.

1. This criminal appeal has been preferred under Section - 495 BNSS against order dated 17.01.2026, passed by learned Additional District and Sessions Judge / F.T.C.-Ist, Saharanpur, in Criminal Misc. Case No. 715 of 2025 (State Vs. Pawan Singh and Others), under Section - 446 Cr.P.C. (491 BNSS), whereby recovery warrants have been issued against appellant / surety for realization of the amount of bail bond.

2. Heard learned counsel for the appellant, learned A.G.A. for the State and perused the record.

3. This appeal is being finally decided at the stage of admission itself.

4. Learned counsel for the appellant submitted that in S.T. No. 70A/2018 (State Vs. Usman), under Section - 489-A, 489-B, 489-C, 489-D I.P.C., Police Station - Devband, District - Saharanpur, appellant and one Pawan have stood surety for accused Usman. During pendency of the said case, accused Usman has absconded. Appellant / surety has tried to get him arrested but in vain. The trial Court has initiated proceedings under Section - 446 Cr.P.C. / 491 BNSS against appellant and co-surety Pawan and recovery warrants were issued. Learned counsel submitted that

meanwhile economic condition of appellant has got worse and he is not in a position to deposit the amount of bail bond. It was submitted that in view of economic condition of appellant, the appellant may be discharged from said proceedings under Section - 446 Cr.P.C. / 491 BNSS.

5. Learned A.G.A. has opposed the appeal and submitted that there is no illegality or perversity in the impugned order.

6. I have considered the rival submissions and perused the record.

7. Before proceeding further, it would be relevant to peruse the provisions of Section - 491 and 492 BNSS, which are reincarnation of section 446 & 446-A Cr.P.C., read as under :-

''491. Procedure when bond has been forfeited.-(1) Where, -

a bond under this Sanhita is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited; or

(b) in respect of any other bond under this Sanhita, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

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

Explanation. – A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Sanhita:

Provided that where such penalty is not paid and cannot be

recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) 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.

(5) Where any person who has furnished security under section 125 or section 136 or section 401 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 494, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this 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."

"492. Cancellation of bond and bail bond. - Without prejudice to the provisions of section 491, where a bond or bail bond under this Sanhita is for appearance of a person in a case and it is forfeited for breach of a condition,—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the police officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Sanhita he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the police officer or the Court, as the case may be, thinks sufficient."

8. Essentially Section - 491 BNSS deals with sureties for breach of bond by the accused, whereas, Section - 492 BNSS deals with the consequences to be faced by accused upon forfeiture of bond (personal

bond). So far surety of accused is concerned a separate notice is required to be given to the sureties to show cause as to why penalty should not be paid by them and only if they are not able to show cause, the Court can proceed to recover the penalty as if it were a fine imposed under the BNSS / CrPC. Thus, for taking action under Section - 491 BNSS, notice should be issued to the sureties and it should be proved in a separate proceedings that the accused had violated the bail bond for the sureties to make good the bond amount.

9. In the instant matter, it appears that in S.T. No. 70A/2018 (State Vs. Usman), under Section - 489-A, 489-B, 489-C, 489-D I.P.C., Police Station - Devband, District - Saharanpur, appellant and one Pawan have stood surety for accused Usman and they have submitted bail bond to the tune of Rs. one lakh. During pendency of the said case, accused Usman absconded. The trial Court has initiated proceedings under Section - 446 Cr.P.C. / 491 BNSS and by impugned order the trial Court has issued recovery warrants to realise an amount of Rs. one lakh from the appellant / surety. It was submitted that economic condition of appellant is not well. As per provisions of Section - 446 (3) Cr.P.C. / 491 (3) BNSS, the Court has power to remit any portion of penalty imposed on forfeiture of bail bond. In view of attending facts and circumstances, it appears that the penalty of the amount of bail bond be reduced. Considering entire facts of the matter, it appears that the ends of justice would met if the amount of penalty is reduced to 50 %.

10. Accordingly, the appellant / surety is directed to deposit amount of Rs. 50,000/- before the trial Court concerned within a period of 45 days from today. For a period of 45 days from today, no coercive action shall

be taken against the appellant. On deposition of said amount, the proceedings under Section - 446 Cr.P.C. / 491 BNSS pending before the trial Court vide Criminal Misc. Case No. 715 of 2025 (State Vs. Pawan and Others), qua the appellant / surety would stand disposed of.

11. Appeal is **disposed of** in above terms.

(Raj Beer Singh,J.)

March 25, 2026

S Rawat