

**Amendment in Sections 513 & 514
of the Code of Criminal Procedure 1898**

Report No. 66

**AMENDMENT IN SECTIONS 513 & 514
OF THE CODE OF CRIMINAL PROCEDURE 1898**

Bail bond is a written undertaking given by an accused person alongwith his surety to the effect that in case he fails to turn up for trial before the Court, the amount mentioned in the bond may be forfeited to the State. The object of obtaining bail bond is to secure attendance/appearance of the accused in court when he is called upon, and in case of failure to appear, some coercive measures be taken against him including the forfeiture of bond and attachment and sale of his movable property.

Procedure for forfeiting a bail bond and sale of property is given in Sections 513, 514 of the Code of Criminal Procedure 1898. Besides the requirement of bond in bail matters, it may also be required under Section 106 of the Cr.P.C, as security for keeping the peace on conviction; Section 107, as security for keeping the peace in other cases; Section 108, as security for good behaviour from person disseminating seditious matter; Section 109, as security for good behaviour from vagrants and suspected persons; 110, as security for good behaviour from habitual offenders and Section 118, as security, for keeping peace or maintaining good behaviour. When bail bond is no more required by the court, it may be cancelled or discharged under Sections 125 and 126 of the Cr.P.C.

Sections 513 and 514 of the Code of Criminal Procedure 1898 provide procedure whereunder a bond is liable to forfeiture and property liable to attachment and sale. The Sections read as under:

Section 513. Deposit instead of recognizance.—When any person is required by any court or officer to execute a bond, with or without sureties, such court or officer 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.

514. Procedure on forfeiture of bond.—(1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Magistrate of the First Class, or, when, the bond is for appearance before a Court, to the satisfaction of such Court, that such 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.

(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, to 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 106 or section 118 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 514B, 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.

As is obvious, the two sections separately deal with different situations. In Section 513, the court or an officer authorized may permit the surety that in lieu of executing a bond, he may deposit a sum of money or Government promissory note. This is the most secure mode, as in case of default in appearance, his money is forfeited without going into further process. However, the procedure of forfeiture prescribed under Section 514 is somewhat complicated. It may cause hurdles in realising the bonded amount as under sub-section (2) thereof, only movable property is subject to attachment and sale. The clause runs:

Section 514 (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.

Generally, when a bond is executed both movable and immovable property is made subject to surety. It is specifically described in the bail bond, but in the case of default, the court is not empowered to attach and sell the immovable property though subject to the bail bond. It often happens that the movable property alone is insufficient and the sale of immovable is also required. The court however cannot proceed against the immovable property, there being no provision for the purpose. In a case *Basharat Ali v State* (2002 MLD 1289) it was held:

“Provision of Section 514, Cr.P.C. provided that a warrant of attachment could be issued only for movable property whereas in the present case, the court had ordered attachment of land/immovable property of surety. Such order could not be issued under the law but this aspect of the matter may not detain court from any further action because surety had himself volunteered that if a reasonable time was given to surety to deposit amount

of bail bond in cash towards discharge of his liability, then he would not contest legal aspect of proceedings”.

In order to cover this section, it is, proposed that after the word ”movable” and before the word “property” in sub-section (2) of section 514 of the Criminal Procedure Code 1898, the word “immovable”, may be inserted. The revised sub-section (2) would read as under:

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, **or immovable** property belonging to such person or his estate if he be dead.

As earlier explained, the object of securing the bonds is to ensure the attendance of the accused during trial, or to force a person to obey and maintain security or maintain peace, etc. It has often been observed that sometimes the accused released on bail becomes a fugitive and proceedings under section 514 of the Cr.P.C. are initiated against the sureties to produce the accused. But on failure to procure attendance of the accused, the surety always take shelter of sub-section (5) of section 514 of the Code and request of remission of penalty. The relevant provision reads as under:

Section 514 (5): The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Standing surety for some one is an act of benevolence, on humanitarian grounds, due to close relationship. The superior courts while deciding the issue of imposing penalty or granting remission in penalty often take lenient view to meet ends of justice. But, if it is established or apparent on the face of record, that, the accused is managed to release on bail for any ulterior motives then appropriate action is full forfeiture of bond as is held in case *Nazar Muhammad v State* (2002 Pcr. L.J 2063). The court observed that-

“Standing surety for some one is an act of benevolence and unless and until it is established that the surety had got the accused released on bail for any ulterior motives, the surety is not to be treated harshly nor punished severely without there being extraordinary circumstances calling for full forfeiture of surety bond.”

In another case *Chakri v State* (2002 YLR 326) it was observed by the court:

“Where it is apparent that a person who stood surety for an accused out of sheer benevolence or due to close relationship the entire amount of surety bond should not be forfeited keeping in view the facts and circumstances of case.”

The Concession in payment of penalty can be abused when a substantial amount is remitted as is apparent from the following cases:

1. Penalty against surety who executed bail bond out of benevolence for accused was reduced from Rs. 5000 to Rs. 500. (NLR 1994 Cr.L.J 23)
2. Surety executed a bail bond for female accused, imposition of penalty was reduced from Rs. 25,000/- to 10,000/-. (NLR 1994 Cr. L.J 30)
3. A surety bond in the sum of Rs. 50,000/- for the accused involved in a murder case was reduced to Rs. 25,000/-. (1994 MLD 122)

At times, the request for concession of remission is made to the maximum limit. For example in a case the request was made for concession in penalty to 1/5th of surety amount which the court turned as mockery of justice, and held:

“That the surety would be given concession in penalty to half of surety amount keeping in view humanitarian consideration which prompted surety to give surety for accused. (NLR 1994 Cr. L.J 153)”.

In a latest judgment, the Lahore High Court, has given a principle for remission as under:

“The court in dealing with cases of sureties who might be in default is supposed to maintain a balance between undue leniency which might be leading to abuse of the procedure and interference with the cause of justice. (PLD 2003 Lah 802)”.

With a view to prevent the abuse of the provision, the discretion of the Court to remit the penalty may be curtailed. The remission should not exceed 50% of the penalty. It is therefore suggested that sub-section (5) of section 514 of the Cr.P.C. may be amended as under:

Section 514 (5): The Court may, at its discretion, remit any portion of penalty mentioned and enforce payment in part only *which shall not be more than half of surety amount.*

Commission's Deliberations on 14-2-2004.

The Law & Justice Commission in its meeting on 14 February 2004 discussed the working paper and draft amendments in sections 513 and 514 of the Cr.P.C. During the deliberations, the members pointed out that some judgments of the superior courts may be examined which place restriction on the unbridled power of the court in granting remission of penalty. It was further pointed out that consideration should be given to the requirement of depositing in cash which is easier and sure way to realize the bonded amount. The Commission, therefore, asked the Secretary to revise the draft, also taking into consideration Sections 497 & 498 of the Cr.P.C and thereafter forward the draft paper to the Chief Justice, Lahore High Court, for further refinement.

The observations of the superior courts with regard to recovery of amount in a forfeited bond have been duly incorporated in the text of the paper. Apparently, the superior courts observations vary from case to case, in keeping with the peculiar facts and circumstances of each case.

The powers of the police/court to take bond from a person accused of bailable/non bailable offences, is covered in Chapter 36 (Sections 496 to 502) of the Cr.P.C. These sections may be reproduced below for full comprehension of the subject.

Section 496.- *In what cases bail to be granted.-* When any person other than a person accused of a non-bailable offence is arrested or detailed without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).

Section 497.- *When bail may be taken in case of non-bailable offence.-* (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of (an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail }:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If, at any time after the conclusion of the trial of a person accused of a non-

bailable offence and before Judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.

Section 498.- Power to direct admission to bail or reduction of bail. The amount of every bond executed under the Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail" or that the bail required by a police officer or Magistrate be reduced.

Section 498-A.- No bail to be granted to a person not in custody, in court or against whom no case is registered, etc. Nothing in section 497 or section 498 shall be deemed to require or authorize a Court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is not present in court or against whom no case stands registered for the time being and an order for the release of a person on bail, or a direction that a person be admitted to bail, shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction.

Section 499.— *Bond of accused and sureties.*— (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Section 500.—*Discharge from custody.*—(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the Jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Section 501.—*Power to order sufficient bail when that first taken is insufficient.*—If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties,

and, on his failing so to do, may commit him to Jail.

Section 502.—Discharge of sureties.—(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to custody.

The revised paper was forwarded to the Hon. Chief Justice, Lahore High Court, who examined the issue and forwarded the following draft amendments to Sections 513 & 514 of the Cr.PC:

Amendment of Section 514, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), in Section 514,

- (i) in sub-section (2) after the word "moveable" the words "or immoveable" shall be inserted.
- (ii) in sub-section (5), after the word and comma "only", the word "which shall not be more than half of surety amount of penalty" shall be added.

Amendment of Section 513, Act V of 1898.—In the Code of Criminal Procedure 1898 (Act V of 1898) the existing section 513 may be rephrased as under:

Except in case of bond for good behaviour, when any person is required by any court or officer to be released on bail, such court or officer may require him to:

- (a) deposit a sum of money or Government promissory comments to such amount.
- (b) furnish bank guarantee of the like amount to the satisfaction of court or officer.
- (c) execute bail bond with or without surety.

Accordingly, with slight modification to the draft, the revised draft paper may be approved by the Commission. The amendments proposed are laid down in the table below.

Existing Law	Proposed Amendment
<p>Section 513. Deposit instead of recognizance. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer 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.</p>	<p>Section 513. Except in case of bond for good behaviour, when any person is to be release on bail by any court or officer, such court or officer may require him to:</p> <p>(a) deposit a sum of money or Government promissory notes, or furnish bank guarantee to the satisfaction of court or officer, to such amount; or</p> <p>(b) execute bail bond with or without surety.</p>
<p>514. (1)...</p> <p>(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.</p>	<p>514. (1)...</p> <p>(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 or immovable property belonging to such person or his estate if he be dead.</p>
<p>(3)...</p>	<p>(3)...</p>
<p>(4)...</p>	<p>(4)...</p>
<p>(5) The court may, at his discretion, remit any position of the penalty mentioned and enforce payment in part only.</p>	<p>(5) The court may, at his discretion, remit not more than half of the penalty mentioned and enforce payment in part only, <i>which shall not be more than half of surety amount of penalty.</i></p>

Draft amendment bill follows:

A

BILL

further to amend the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure 1898, for the purposes hereinafter appearing;

It is hereby enacted as follows.

1. Short title and commencement.—(1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2004.

(2) It shall come into force at once.

2. Substitution of Section 513, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Act, for Section 513 the following shall be substituted, namely:-

“513. Except in case of bond for good behaviour, when any person is to be released on bail by any court or officer, such court or officer may require him to-

- (a) deposit a sum of money or Government promissory notes, or furnish bank guarantee to the satisfaction of court or officer, to such amount; or
- (b) execute bail bond with or without surety”.

3. Amendment of Section 514, Act V of 1898.— In the said Act, in section 514,—

- (i) in sub-section (2) after the word “movable” the words “ or immovable” shall be inserted.
- (ii) in sub-section (5), after the word and comma “only,” the words “which shall not be more than half of surety amount of penalty” shall be added.

Commission’s deliberation on 11-12-2004.

The above working paper was again considered by the Commission in its meeting held on 11-12-04.

The Secretary explained that the draft has earlier been considered by the Commission. The Commission had pointed out that certain judgments of the superior courts on the issue of discretion of the court to grant remission in penalty on a forfeited bond to be examined, and the draft sent to the Chief Justice, Lahore High Court for further refinement. The new draft, accordingly, has been approved by the Chief Justice, Lahore High Court, the Secretary added. The Chairman observed that notwithstanding the observations of the courts that to stand surety is an act of benevolence and humanitarian in character, the provision is abused, and therefore, the reform of the law would be in order to plug the loopholes therein. He suggested rephrasing of the draft amendment to

Section 513 in a way that the emphasis is on cash deposit or bank guarantee, and if need be, some time can be given to the accused to arrange the same. However, if the Court is satisfied that his financial status does not so permit, then as an alternative, he may be released on surety bond. Subject to the above observation, the Commission approved the draft amendment to Section 513. The Commission also approved amendment to Section 514 by adding the word 'immovable' property, liable for attachment. The Commission further approved amendment to clause (5) of Section 514 to the effect that the discretion of the court to grant remission should be restricted upto 50% of the amount of the surety bond.