

## **SECURITY FOR RELEASE OF A SHIP**

When a trading ship is arrested and ready to sail from port, it is customary and prudent to furnish security as determined by the court. This allows the ship to continue its journey, thereby avoiding detention losses. The security typically includes the sheriff's poundage and must be provided unless a caveat against release exists in the Caveat Release Book, in which case the caveator must be notified.

### Objection to Court Jurisdiction

The defendant can object to the court's jurisdiction by filing a notice of motion supported by an affidavit, requesting the warrant of arrest be superseded and the security released. This does not require a written statement unless the jurisdictional objection involves contentious facts. If the ship is likely to stay at port for several days, the motion to set aside the arrest can be heard urgently.

### Reducing Excessive Security

If the security amount is deemed excessive, an application can be made to reduce it either before or after the security is furnished. Security is usually provided through a cash deposit or a bank guarantee from a recognized bank in India. The bank guarantee must remain in force until the final disposition of the suit and one year thereafter. P&I club guarantees are generally not accepted by Indian courts, although plaintiffs may accept letters of indemnity from such clubs.

### Case Laws

The *Christiansborg* (1885) 10 P.D. 141 (C.A.): This case demonstrated that a second arrest in a different jurisdiction for the same cause of action could be considered oppressive. The ship was arrested in Holland and released upon a guarantee, and subsequently, its arrest in England was deemed against good faith, leading to its release.

*MV Elizabeth v. Harwan Investment and Trading*: The Indian Supreme Court clarified that admiralty law allows for in rem actions against the ship or cargo, which can convert into in personam actions against the defendant upon appearance. This means the ship can be sold to satisfy claims if the owner does not submit to the court's jurisdiction.

*Gp Global Apac Pte. Ltd vs MV Silvia Glory*: The Gujarat High Court reiterated the principles of admiralty law, emphasizing that an appearance by the owner to defend against the claims can result in personal liability if the security provided is insufficient to cover the judgment amount.

#### Procedural Requirements

To arrest a ship, the claimant must provide a properly executed power of attorney, a plaint, an undertaking, a draft of the arrest warrant, and an affidavit to the court. The arrest warrant is served by a bailiff, who informs relevant port and customs authorities and executes the warrant on the ship's master. If the ship is released upon security being furnished, the suit proceeds to trial unless settled otherwise

In the case of arrest of a trading ship which is ready to sail from the port, it is not only usual but considered to be the prudent thing to do for security to be furnished to the extent fixed by the court, together with the sheriff's poundage, and to sail away the ship and thereby avoid detention loss, unless there is a caveat against release outstanding in the Caveat Release Book in which case notice will have to be issued to the caveator. It is not necessary that the filing of the appearance or the giving of security shall be under

protest as to the Court's jurisdiction to receive and try the suit and the entry of an appearance and giving of security will not amount to submission to the court's jurisdiction.

The objection to the jurisdiction of the court to entertain the suit can be raised on behalf of the defendant by way of a notice of motion, supported by an affidavit, praying for an order that the warrant of arrest issued by the court be superseded and set aside and the amount of the bail or guarantee furnished on behalf of the defendant be released, and there is no necessity to deliver a written statement traversing the jurisdiction unless the validity of the objection to jurisdiction depended upon the proof of controversial facts. In cases where the arrested ship is likely to remain at the port for a few days, the notice of motion for superseding the warrant of arrest may be heard as a matter of urgency.

In cases where the amount of the security directed to be furnished is excessive, an application on notice of motion may be made for its reduction either before or after the security is furnished.

Security for the claim in the suit is furnished by means of a cash deposit in the registry or a bank guarantee for the amount stated in the warrant of arrest. The bank guarantee is required to be from a nationalized bank or a foreign bank carrying on business in India and having an office at Calcutta, Madras or Bombay where the warrant of arrest is issued. The bank giving the guarantee will itself require an acceptable counter-guarantee from a bank abroad before it will furnish its guarantee to the court.

The courts are not acquainted with P.& I. clubs and a P.& I. club guarantee is not accepted. However, a plaintiff is free to accept a letter of indemnity issued by a P.& I. club. The master of an arrested ship can represent the ship in taking steps to have it released. The bank guarantee, unless discharged, will have to continue to remain in force till the suit is finally disposed of and for a period of one year thereafter. It is possible to substitute a bank guarantee for

the cash deposit. In the case of a cash deposit it is usual for the court, at the instance of the parties, to invest the amount on an interest-bearing term deposit, pending the disposal of the suit.

Property arrested under admiralty jurisdiction by a warrant may be ordered to be released

(i) at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or

(ii) on the defendant paying into Court the amount claimed in the suit; or

(iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(iv) on any other ground that the Court may deem just.

In *The "Christiansborg"* (1885) 10 P.D. 141 (C.A), a ship had been arrested in Holland and released by the court against an insurance company guarantee. Subsequently the ship was arrested in England in respect of the same cause of action. It was held that the arrest in England was oppressive and against good faith and the ship would therefore be released.

The release of an arrested vessel or any property under arrest by a High Court is a multifaceted process governed by specific legal principles and procedures under Indian admiralty law. This process aims to balance the interests of the claimant and the ship owner while ensuring the effective administration of justice.

#### 1. Grounds for Release

The release of an arrested ship can occur under several conditions:

At the Plaintiff's Request: The plaintiff may request the release of the property before the defendant appears in court or files a Vakalatnama (a legal document authorizing representation). This can be done to expedite proceedings or settle disputes amicably.

Upon Payment by the Defendant: The defendant can secure the release of the arrested ship by paying the claimed amount into the court. This payment effectively discharges the claim and results in the release of the property.

Providing Security: The defendant may provide security for the amount claimed in the suit, as directed by the court. This security can take various forms:

Bail Bond: A written undertaking to pay the amount if required.

Payment into Court: Cash or other liquid assets deposited with the court.

Bank Guarantee: A guarantee from a bank to cover the amount claimed.

Letter of Undertaking (LOU): A written commitment from a Protection and Indemnity (P&I) Club or insurer to cover the claim.

Other Grounds Deemed Just by the Court: The court has the discretion to release the property on any other grounds it considers just. This can include settlements or other equitable considerations.

## 2. Authorization and Costs

Authorization: The release of an arrested ship must be authorized by an instrument issued by the Prothonotary and Senior Master, except where the court dispenses with this requirement. This instrument acts as formal documentation permitting the release.

Lodgment and Costs: Once the release is authorized, the party seeking the release must lodge the release order with a praecipe in the office of the Sheriff or Marshal. The party must also pay all costs related to the care and custody of the property during its arrest, including any expenses incurred for maintaining and securing the ship.

### Challenges in Release Situations

Several issues can arise in the release of an arrested ship:

Bankruptcy or Abandonment: If the ship owner is bankrupt or the crew has abandoned the vessel, maintaining the ship becomes challenging. The Marshal or Sheriff is responsible for ensuring the ship's upkeep, which involves significant expenses such as hiring a skeleton crew and performing necessary inspections.

Failure to Provide Funds: If the arresting party fails to provide funds for the maintenance of the ship, the Marshal or Sheriff will report this to the court. The court may then order the release of the ship if it deems the arresting party's failure to provide funds unjust.

### Case Law Examples

Several case laws illustrate the principles and procedures involved in the release of an arrested ship:

*Captain & Crew of the MV Voseleai v Owners of the MV Voseleai (1994):*

In this case, the court ordered the release of the vessel upon the payment of a bond after the crew claimed unpaid wages. The judgment established that providing sufficient security for the plaintiff's claim necessitates the release of the arrested vessel.

*Chandra v Kiribati Shipping Services Ltd (2010):*

The court held that a claim for repairs, even if it does not constitute a maritime lien, could justify an arrest if the plaintiff establishes a lawful right to claim money due under a contract. The case highlighted that claims under contracts can be grounds for arrest and subsequent release.

Cong Yu Qin v The Owners of the Motor Vessel 'Ping An 6' (2003):

The court granted a default judgment without the vessel being under arrest, illustrating that jurisdiction can be established even if the vessel is not under arrest, provided the property is under the lawful control of the state.

Donald Pickering & Sons Enterprises Ltd v Karim's Ltd (1997):

This case reaffirmed that an in rem action could be maintained even without a maritime lien, emphasizing the court's discretion in issuing arrest warrants and subsequent release orders.

#### Practical Implications

**Negotiating Settlements:** Settlements can expedite the release process. Parties often negotiate terms to facilitate the release of the vessel, saving time and resources. This requires negotiation skills and a comprehensive understanding of maritime law.

**Maintaining Arrested Ships:** The arresting party or an intervener may need to fund the maintenance of the arrested ship to prevent its deterioration. Courts may order these expenses to be a first charge on the proceeds from the ship's sale, ensuring priority payment regardless of claim priority.

#### Procedural Details

**Caveat Against Release:** Any party seeking to prevent the release of arrested property must file a praecipe requesting a caveat against the release. The

caveat is entered in the "Caveat Release Book" maintained by the court registry.

Security for Costs: Under Order XXV Rule 1 of the Code of Civil Procedure, 1908, the court may require the plaintiff to provide security for costs if the plaintiff is residing outside India and lacks sufficient immovable property within India. This requirement ensures that defendants are protected against potential costs incurred in the proceedings.

The release of an arrested ship involves a complex interplay of legal procedures and principles aimed at balancing the interests of the claimant and the defendant. Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Admiralty Rules of the High Courts, the release can be effected through payment, security, or other judicially deemed just grounds. Case law underscores the importance of timely and adequate provision of security to ensure the effective release of the vessel and the fair resolution of maritime claims.