

Uttarakhand High Court

David Morrison v. State Of Uttarakhand

Criminal Misc. Application No. 902 of 2020

13.01.2021

CrPC S. 445- Section 445 of the Code is meant for the benefit of the person who is unable to find a surety. The applicant- accused is a foreigner and he is not able to furnish sureties - The same does not debar him from being admitted to bail - The applicant-accused is permitted to deposit the cash amount, a reasonable amount, to the satisfaction of the court concerned, in lieu of executing surety bonds.

Shri Lalit Sharma, learned Advocate Shri Deepak Bisht learned Brief Holder for the State Judgment

Alok Kumar Verma, J.:—

Shri Alok Kumar Verma, J. – This Criminal Misc. Application is filed by the applicant-accused to set aside the order dated 08.10.2020 passed by learned Additional Chief Judicial Magistrate, Kashipur in Criminal Case No.4069 of 2019, “**State v. David Morrison and others**”, whereby, the application of the applicant-accused to release the applicant-accused on bail after depositing cash amount in lieu of executing surety bond.

2. Heard Mr. Lalit Sharma, learned counsel for the applicant and Mr. Deepak Bisht, learned Brief Holder for the State.

3. The applicant-accused moved an application before this Court under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) for grant of regular bail in connection with Case Crime No.44 of 2019, registered with Police Station Kunda, District Udhampur for the offence punishable under Sections 420, 120-B of the I.P.C. section 66 of the Information Technology Act, 2000 and section 14 of the Foreigners Act.

4. The said Bail Application **No.721 of 2020** was allowed on 23.07.2020 on the following conditions : –

“8. The bail application is allowed on the following conditions:-

(i) the applicant shall be released on bail on furnishing a bond with two sureties of like amount, one of whom must be a local surety, to the satisfaction of the court concerned;

(ii) after the passport is re-issued as per rules, the Foreigners Regional Registration Officer is directed to endorse the Visa of the applicant according to law, prior to release from the

jail concerned and, such endorsement can carry a limited validity co- terminus with the completion of the trial. The superintendent of jail concerned shall ensure that the applicant is released only after endorsement of his Visa.

(iii) after re-issue his passport, the applicant shall surrender it before the court concerned and shall report his place of residence before the court concerned and the local police station.

(iv) the applicant shall report his presence before the local police station every month.

9. The applicant-accused shall be produced in custody before the competent authority for the purpose of re-issuance of his passport for which the Senior Superintendent of Police/ Superintendent of Police of the district concerned will take necessary action. The SSP/SP of the district concerned will be informed through the learned counsel appearing for the State."

5. Learned counsel for the applicant submitted that passport of the applicant-accused is deposited before the concerned Magistrate and because the applicant is foreigner, he is unable to arrange sureties. Therefore, he offered to deposit cash amount in lieu of executing surety bond. The said prayer of the applicant-accused has been rejected by the impugned order.

6. Section 441 of the Code provides that 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 a person so directed to execute the bond either with surety or without surety is unable to furnish surety, then under Section 445 of the Code, he is permitted to deposit a sum of money or Government promissory note.

7. In the first instance, the applicant-accused was directed to furnish surety bond. He is unable to execute surety bond. The offer to deposit cash surety came from the applicant-accused.

8. Section 445 of the Code is meant for the benefit of the person who is unable to find a surety. The applicant- accused is a foreigner and he is not able to furnish sureties. The same does not debar him from being admitted to bail.

9. In the facts and circumstances of the case, the order dated 08.10.2020 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udam Singh Nagar in Criminal Case 4069 of 2019 "**State v. David Morrison and others**" is liable to be set aside. Accordingly, the impugned order dated 08.10.2020 is set aside. The applicant-accused is permitted to deposit the cash amount, a reasonable amount, to the satisfaction of the court concerned, in lieu of executing surety bonds.

10. Accordingly, this Criminal Misc. Application stands allowed in the terms mentioned above.

Uttarakhand High Court

David Morrison v. State Of Uttarakhand

Correction Application (Mcrc) No. 139 of 2021 and First Bail Application No. 721 of 2020

11.05.2021

Ms. Lata Negi, learned, Brief Holder for the State. Counsel for the ApplicantMr. Lalit Sharma.

Judgment

Alok Kumar Verma, J.:— This Correction Application (MCRC) No. 139 of 2021) is filed by Mr. Lalit Sharma, the learned counsel for the applicant for permission to permit him to correct the name and address of the applicant in the Bail Application No. 721 of 2020. He further prayed that the bail order dated 23.07.2020 be corrected accordingly.

2. Heard Mr. Lalit Sharma, learned counsel for the applicant and Ms. Lata Negi, learned Brief Holder for the State on the Correction Application (MCRC) No. 139 of 2021 through video conferencing.

3. Facts, to the limited extent necessary, are that an FIR was registered on 01.04.2019 against the present applicant along with one co-accused on the basis of a written report lodged by the informant Abhishek Khurana. According to the informant, through hatching a criminal conspiracy by the present applicant along with the co-accused, they lured to win the lottery of five lakhs pounds, cheated and fraudulently took Rs. 25 lakhs by sending SMS on behalf of Coca Cola Company on mobile phone of Gaurav Kumar, uncle of the informant. After registration of the FIR, it was found that the present applicant and the co-accused were residing in India without a valid Visa and Passport.

4. An application for regular bail (Bail Application No. 721 of 2020) was moved on behalf of the applicant under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with Case Crime No. 44 of 2019, registered with Police Station Kunda, District Udhampur for the offence punishable under Sections 420, 120B of the I.P.C., Section 66 of the Information Technology Act, 2000 and Section 14 of the Foreigners Act.

5. At the time of hearing of the said bail application, it was argued on behalf of the applicant that when the applicant along with co-accused were coming to Udhampur in a taxi, the taxi driver fled away with all the belongings of the applicant and the co-accused. Those bags also contained the passports of the applicant and the co-accused. The applicant and the co-accused were apprehended by the police. The charge-sheet was submitted and the co-accused of the similar role was granted bail by the Coordinate Bench of this High Court.

6. The said Bail Application No. 721 of 2020 was allowed on 23.07.2020 on the following conditions:—

“8. The bail application is allowed on the following conditions:—

- (i) the applicant shall be released on bail on furnishing a bond with two sureties of like amount, one of whom must be a local surety, to the satisfaction of the court concerned;*
- (ii) after the passport is re-issued as per rules, the Foreigners Regional Registration Officer is directed to endorse the Visa of the applicant according to law, prior to release from the jail concerned and, such endorsement can carry a limited validity co-terminus with the completion of the trial. The superintendent of jail concerned shall ensure that the applicant is released only after endorsement of his Visa.*
- (iii) after re-issue his passport, the applicant shall surrender it before the court concerned and shall report his place of residence before the court concerned and the local police station.*
- (iv) the applicant shall report his presence before the local police station every month.*

9. *The applicant-accused shall be produced in custody before the competent authority for the purpose of re-issuance of his passport for which the Senior Superintendent of Police/ Superintendent of Police of the district concerned will take necessary action. The SSP/SP of the district concerned will be informed through the learned counsel appearing for the State.”*

7. Thereafter, the learned counsel for the applicant moved a Criminal Misc. Application No. 902 of 2020 to set aside the order dated 08.10.2020, passed by the learned Additional Chief Judicial Magistrate, Kashipur in Criminal Case No. 4069 of 2019, “State v. David Morrison”, whereby, the application of the applicant-accused to release the applicant-accused on bail, after depositing cash amount in lieu of executing surety bond, was dismissed.

8. In the said application, the case of the applicant was that the passport of the applicant-accused was deposited before the concerned Magistrate and because the applicant is a foreigner, he was unable to arrange sureties. Therefore, he offered to deposit cash amount in lieu of executing surety bond.

9. The said Criminal Misc. Application No. 902 of 2020 was allowed on 13.01.2021. Paragraph Nos. 6 to 10 of the order dated 13.01.2021 are reproduced hereunder:—

“6. Section 441 of the Code provides that 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 a person so directed to execute the bond either with surety or without surety is unable to furnish surety, then under Section 445 of the Code, he is permitted to deposit a sum of money or Government promissory note.

7. In the first instance, the applicant-accused was directed to furnish surety bond. He is unable to execute surety bond. The offer to deposit cash surety came from the applicant-accused.

8. Section 445 of the Code is meant for the benefit of the person who is unable to find a surety. The applicant-accused is a foreigner and he is not able to furnish sureties. The same does not debar him from being admitted to bail.

9. In the facts and circumstances of the case, the order dated 08.10.2020, passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udhampur in Criminal Case 4069 of 2019 "State v. David Morrison" is liable to be set aside. Accordingly, the impugned order dated 08.10.2020 is set aside. The applicant-accused is permitted to deposit the cash amount, a reasonable amount, to the satisfaction of the court concerned, in lieu of executing surety bonds.

10. Accordingly, this Criminal Misc. Application stands allowed in the terms mentioned above."

10. The instant correction application has been filed on behalf of the applicant with the averments that the real name of the applicant is "Oghene Jackson Onoriode" and he is a "Nigerian" citizen. His address is "No. 50 Crudas Road, Sapele Delta State Nigeria" and his passport number was A01266320. The said passport was deposited before the trial court. But, the police, in his arrest memo and other subsequent documents, wrongly mentioned his name as "David Morrison" and his residence was shown as "Gambia". The correct name and address were mentioned in his passport. The applicant made several applications to the police authorities as well as to the court concerned, but till date the name of the applicant is not corrected, therefore, he could not be released from the jail.

11. Ms. Lata Negi, the learned Brief Holder for the State submitted that the original name of the applicant is David Morrison S/o Mr. Morrison, residence of 50C-OGODO, DALTA GAMBIA as shown in the passport No. PC337492 and Visa No. BJ2248019. She further submitted that a fresh passport of the present applicant has been issued by the Embassy of Nigeria and as per this fresh passport, the name of the present applicant is "Oghene Jackson Onoriode".

12. During the arguments, Ms. Lata Negi, the learned Brief Holder for the State submitted that the bail application of the applicant has already been allowed and in the facts and circumstances of the case, the State has no objection on the correction application and the submissions of the learned counsel of the applicant.

13. Having considered the submissions of learned counsel for both the parties, the Correction Application (MCRC) No. 139 of 2021 is allowed. The bail order dated 23.07.2020, passed in the Bail Application No. 721 of 2020 is corrected accordingly.

14. The learned counsel for the applicant requested two days' time to file the corrected memo of the bail application. In the interest of justice, time is granted.

15. After filing the corrected memo of the bail application, it is directed that the applicant-

accused be released on bail as per terms of the order dated 23.07.2020, passed in the Bail Application No. 721 of 2020 and order dated 13.01.2021, passed in Criminal Misc. Application No. 902 of 2020.