

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.809 OF 2015

Mohd. Shafikul Islam	..Applicant
-Versus-	
State of Maharashtra	..Respondent

Ms. Sudha Dwivedi for applicant
Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 14th December 2015

P.C.

1] This is an application for modification of order dated 27th October 2015 passed by the Additional Sessions Judge, Greater Mumbai below Exh.3 in Criminal Appeal No.97 of 2015. The applicant has been convicted for the offences punishable under section 14(a) of the Foreigners Act, 1946 by the Trial Court and has been sentenced to suffer R.I. for three years and to pay fine.

2] The applicant had preferred an appeal bearing Appeal No.97 of 2015 in the Court of Additional Sessions Judge, Dindoshi, Mumbai. The applicant moved an application below Exh.3 for his

release on bail during the pendency of appeal. The learned Appellate Court by an order dated 27th October 2015 was pleased to release the applicant on bail on his furnishing personal bond and surety bond of Rs.50,000/- with one or two surety/ sureties in the like amount. The appellate court has further imposed a condition that the applicant shall furnish local surety.

3] Learned Counsel for the applicant submitted that though the appellate court has granted an order of bail in favour of the applicant on 27th October 2015, he is unable to avail the said order as the applicant is unable to give local surety in the said amount.

4] Learned APP on instructions submitted that the applicant by submitting forged and false documents had procured passport at Calcutta. She further submitted that as per the judgement of the trial court the applicant is a foreign national and the said fact has been proved after leading evidence. She, therefore, submitted that no sympathy may be shown to the applicant.

5] After taking into consideration the fact that the appellate court

has directed the appellant to be released on bail on 27th October 2015 and since then, he could not avail of the benefit of the said order due inability to arrange for local surety, I am inclined to modify the said order dated 27th October 2015. The applicant is, therefore, permitted to furnish one or two sureties from the State of Maharashtra.

Hence, the following order:-

- (i) The condition No.4 of order dated 27th October 2015 is hereby modified and the applicant is directed to furnish sureties from the State of Maharashtra;
- (ii) Before release of the applicant from Jail, the Appellate court through the concerned police shall verify genuineness of the documents furnished by the sureties and after the appellate court is satisfied about the truthfulness and genuineness of the said sureties, it may consider to accept the same;
- (iii) It is further made clear that the appellate court is at liberty to reject the surety if in its considered opinion, the documents furnished by the said sureties upon police report are found to be doubtful or not bonafide. This is being done in the premise that the

applicant has been convicted under section 14(a) of the Foreigners Act.

(iv) Rest of the conditions imposed upon by the appellate court by its order dated 27th October 2015 are not disturbed.

(v) The application is allowed in the aforesaid terms;

(A.S.GADKARI, J)