

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1798 OF 2013

IN

CRIMINAL APPEAL NO.1200 OF 2013

SHEHU ALIYU S/O.ALIYU)...APPLICANT

IN THE MATTER BETWEEN

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

SHEHU ALIYU S/O.ALIYU)...RESPONDENT

Shri Ram Lodhi and Ms.Shamina Sayed, Advocates for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2017.

P.C. :

1 This is an application by the respondent / original accused in Criminal Appeal filed by the State, which was admitted on 23th October 2013 by this court. The applicant / acquitted accused by this application is praying for permitting him to

furnish fresh surety for Rs.20,000/- with liberty to furnish one more surety as well as reduction of the bail amount. In the alternative, the applicant / acquitted accused is seeking for permission to deposit cash security to the tune of Rs.50,000/-.

2 While admitting appeal of the State, this court had directed action under Section 390 of the Code of Criminal Procedure in the form of personal bond and solvent surety in the sum of Rs.50,000/-.

3 Heard the learned advocate appearing for the applicant / acquitted accused. He argued that original surety of the applicant / acquitted accused had again stood surety for somebody else, and therefore, this old surety cannot be continued. He further argued that bail amount be reduced as the applicant / acquitted accused who is a foreign national is unable to furnish surety. In the alternative, it is prayed that the applicant / acquitted accused be permitted to deposit cash to the tune of Rs.50,000/-, instead of furnishing surety to that extent.

4 The learned APP opposed the application by contending that during pendency of the appeal filed by the State, the applicant / acquitted accused was not traceable and he had changed his residential address. The learned APP further argued that the applicant / acquitted accused is a foreign national and he may not be available for the hearing of the appeal of the State.

5 I have carefully considered the rival submissions. The applicant / acquitted accused was convicted by the learned Metropolitan Magistrate for the offences punishable under Sections 471 and 417 read with Section 511 of the IPC and he was sentenced to suffer simple imprisonment for 6 months and 3 months respectively. In an appeal filed by him, the learned Additional Sessions Judge, Greater Bombay, Mumbai, was pleased to acquit the applicant / accused of all offences vide judgment and order dated 5th September 2013 passed in Criminal Appeal No.369 of 2012. It is the case of prosecution that on 22nd March 2011, the applicant / acquitted accused was found to be in possession of forged Visa.

6 Acquittal of the applicant / acquitted accused is challenged by the State and that appeal is admitted. While admitting the appeal itself, this court had directed action under Section 390 of the Code of Criminal Procedure by directing the applicant / acquitted accused to execute personal bond and furnish surety in the sum of Rs.50,000/-. Thus, the object was to secure presence of the applicant / acquitted accused by asking him to furnish surety in the sum of Rs.50,000/-. Undisputedly, the applicant / acquitted accused is a foreign national, and therefore, it is not expected of him to be acquainted with Indian citizens, who may stand as surety to him. Therefore, purpose is of having assurance that the applicant / acquitted accused would be available for undergoing sentence, if any, imposed on him, if ultimately his acquittal is upset by this court in the appeal filed by the State. As such, the applicant / acquitted accused can be directed to deposit cash security instead of furnishing surety in like amount, apart from executing personal bond of Rs.50,000/-. In this view of the matter, the following order :

- i) The application is partly allowed.
- ii) In terms of action under Section 390 of the Code of Criminal Procedure, the applicant / acquitted accused is directed to execute personal bond in the sum of Rs.50,000/-, apart from furnishing cash security of Rs.50,000/- before the trial court.

(A. M. BADAR, J.)