

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.721 of 2021

Fafona Mori	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Taraq Sayed a/w Ashwini Achari i/b Advait Tamhankar, for the Applicant.

Smt.A.A. Takalkar, APP for the State.

PSI Smt.Sandhya Pawar, Crime Branch present.

CORAM : BHARATI DANGRE, J

DATE : 28th SEPTEMBER, 2022.

P.C.

1] The Applicant came to be arrested on 18.11.2019 when a combing operation was initiated to investigate and find out the details of the foreign nationals who are residing without any valid passport/visa. The Applicant produced his Passport which was valid till 03.10.2022, but his Visa had expired on 23.07.2018.

2] When he appeared before Tulinj Police Station, he was alleged of having forged the Visa and that is how the subject CR came to be registered invoking sections 420, 465, 467, 468, 471 of the Indian Penal Code. Apart from this, Section 14 A and B of Foreigners Act and Rule 7 and 3 of the Foreign National Order, 1947 has been invoked.

3] On completion of investigation, charge-sheet has been filed and as far as present Applicant is concerned, charge-sheet allege that he is citizen of Nigeria and though he was not having a valid Visa, he continued to stay in the country. The accusations levelled against him alongwith co-accused is that he has forged the Visa in order to stay in the country.

4] Now, the investigation being completed, the Applicant cannot be kept incarcerated for indefinite period as entire material has been compiled in the charge-sheet.

Apprehension of the prosecution that he will not be available to face the trial, can be taken care of by directing the prosecution to adhere to the directions issued by the Division Bench of this Court in the case of **ABC vs. State through the Investigating Officer, Calangute Police Station, 2019 LawSuit(Bom) 378**, decided on 27.02.2019, in which the following directions were issued :

(iv) In pending matters involving foreign nationals who have no proper/valid travel documents or whose visa term has expired or for like reasons, State/Prosecution must file appropriate applications before the Magistrate/Courts to bring this aspect to the notice of the concerned Magistrate/Courts where such matters are pending. Similarly, the State/Prosecution must, by filing a reply bring to the notice of Magistrate/ Courts such circumstances when the foreign nationals who have no proper travel documents or whose visa term has expired, apply for grant of bail;

(v) The Magistrate/Courts where the matters involving foreign nationals who have no proper/valid travel documents or whose visa term has expired or like reasons must take cognizance of such aspects and thereafter make appropriate orders in accordance with law so that the legal process is not used as an instrument to facilitate overstay or otherwise violate the provisions of Foreigners Act, 1946, rules and orders made thereunder.

5] Subject to the above, the Applicant deserves to be released on bail, on condition that he will not leave this country without permission of the trial court.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Fafona Mori shall be released on bail in connection with C.R.No.1306 of 2019 registered with Tulinj Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount, out of which one surety shall be from the state of Maharashtra.
- (c) The applicant shall report to the concerned Police Station on 1st Monday of every month between 10.00 p.m. to 12.00 p.m.
- (d) The Applicant shall not leave the country without prior permission of the trial Court.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (f) The Applicant shall regularly attend trial, on every date, unless exempted.
- (g) The prosecution shall follow the procedure set out in the decision of ***ABC vs. State through the Investigating Officer, Calangute Police Station, 2019 LawSuit(Bom) 378.***

[BHARATI DANGRE, J]