

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 217 OF 2021

Beka Hamis Faumi

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr. Mithilesh Mishra i/b. Ms. Sadiya Khan, for the Applicant.

Mr. R. M. Pethe, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
DATE : 17 JANUARY 2022
(Through Video Conferencing)

P.C.

. This Application is filed for modification / relaxation of the following conditions of the order dated 9 September 2021.

(2) Applicant viz. Beka Hamis Faumi be released on his executing PB of Rs.1,00,000/- with one or more sureties in the like amount.

(8) Applicant shall produce the certificate of assurance from Embassy / High Commission of Tanzania that he shall not leave India and shall appear before this Court as and when required. Filing of such certificate by the accused shall be condition precedent for his release on bail.

2. I have heard the learned counsel for the Applicant and the learned APP.

3. In so far as the condition No.2 is concerned, it is submitted that the Applicant – Accused is foreign national and unable to obtain local surety. It is also submitted that the amount of surety asked for is on the higher side and it may be reduced. The learned counsel has pointed out that there are orders passed by this Court, particularly in cases of accused who are foreign national to deposit cash surety instead of solvent surety. The order dated 26 June 2020 (Revati Mohite Dere, J.) has been pointed out to show that cash surety may be substituted in the place of solvent surety.

4. In so far as the condition No.8 is concerned, it is submitted that there is no practice or a rule under which an Embassy or a High Commission can issue a certificate that the foreign national (of a country represented by such Embassy or High Commission) shall not leave India and shall appear before the Court for trial. It is submitted that in the absence of any such rule or practice or a precedent, it is not possible for the Applicants to obtain such certificate from the Embassy or a High Commission. It is submitted that effectually the said condition is resulting into denial of bail.

5. The perusal of the bail order shows that there is nothing on record to show that there is any such practice or rule or precedent under which an Embassy or a High Commission can issue a certificate as required by condition No.8. The learned counsel for the Applicant appears to be justified in saying that even if such certificate is issued, it cannot be expected from the Embassy or a High Commission to monitor the movement of the foreign national and to ensure that he will not leave India. It is pointed out that vide condition No.6, the passport of the Applicant is directed to be surrendered and thus there is no possibility of the Applicant leaving India which sufficiently takes care of the apprehension on behalf of the prosecution on the aspect of availability of the Applicant for trial.

6. Considering the submissions, I do find that in the absence of any rule or practice or a precedent, the condition No.8 could not have been imposed. In the result, the following order is passed.

ORDER

1. The condition No.2 is modified and the Applicant is permitted to deposit cash surety of Rs.1 Lakh in lieu of recognizance.
2. The condition No.8 for production of the certificate is hereby recalled.

3. The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.