

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.261 OF 2023-F AND
CRIMINAL MISC. APPLICATION NO.1 OF 2023
IN
CRIMINAL APPLICATION (BAIL) NO.585 OF 2021-F

CRIMINAL MISC. APPLICATION NO.261 OF 2023 (F)

UGOCHUKWU SOLOMON UBABUKO
PRESENTLY IN JUDICIAL LOCKUP
CENTRAL JAIL COLVALE ... APPLICANT
Versus
UNION OF INDIA THE INTELLIGENCE
OFFICER NARCOTICS CONTROL BUREAU
SUB ZONE GOA AND ANR ... RESPONDENTS

Mr. K. Poulekar, Advocate for the applicant.
Mr. P. Faldessai, Deputy Solicitor General of India for respondents.

WITH
CRIMINAL MISC. APPLICATION NO.1 OF 2023

UNION OF INDIA NARCOTICS CONTROL
BUREAU THR. INTELLIGENCE OFFICER
VIVEK PANDEY ... APPLICANT
Versus
UGOCHUKWU SOLOMON UBABUKO,
PRESENTLY LODGED AT JUDICIAL LOCK
UP, CENTRAL JAIL COLVALE ... RESPONDENT

Mr. P. Faldessai, Deputy Solicitor General of India for applicant.
Mr. K. Poulekar, Advocate for the respondent.

CORAM: PRAKASH D NAIK, J

DATED: 9th November 2023

P.C..

1. This is an application for modification of conditions (b) and (c)

stipulated in order dated 21.10.2021 passed in Criminal Application (Bail) No. 585 of 2021-F.

2. The applicant is a Nigerian national and he is facing prosecution for offence punishable under Sections 8(c), 20(b), 21,22 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985(for short “NDPS Act”). The applicant was arrested on 7.3.2021. On completing the investigation chargesheet was filed.

3. Applicant preferred an application before this Court on the ground that his detention stood vitiated and rendered illegal. Applicant claims that as per documents of respondent no.1 the applicant stood detained from 6.25 p.m on 7.3.2021 and he was eventually produced before the Magistrate on 9.3.2021 at 10.00am which violated his right under Section 22(2) of the Constitution of India. Every person who is arrested and detained in custody have to be produced before nearest Magistrate within 24 hours. Vide order dated 21.10.2021, this Court granted bail to the applicant on furnishing PR bond of Rs. 1,00,000/- and surety in the like amount. It was further directed that release of the applicant shall be subject to production of valid passport and visa. Applicant shall apply for visa from the jail and the respondent/authority to provide assistance to the applicant. Without production of valid passport and visa, the applicant shall not be released on bail. Upon the applicant producing such valid passport and visa, the same shall be deposited with the

investigating officer.

4. While granting bail this Court had also noted criminal antecedent of the applicant. there are four cases registered against him pertaining to the offence under NDPS Act. This Court noted that stringent conditions needs to be imposed. It was pointed out by the prosecution that officials from High Commission of Nigeria visited the State of Goa in February 2021 and after visiting the accused under trials in jail, they undertook biometric analysis and upon actual verification of identification of the accused persons issued fresh passport to them. It is further recorded that applicant has lost his Nigerian passport. Apprehension expressed by respondent no.2 is justified. Therefore, appropriate stringent conditions needs to be imposed while allowing the application.

5. Condition (b) that was imposed while granting bail to the applicant thus indicate that the applicant shall produce valid passport and visa. Apparently online application could be preferred for visa. It was indicated that applicant can apply for the same from jail and authorities were directed to provide assistance to the applicant. Since the applicant could not produced valid passport and visa the applicant continued to be remained in custody although this Court granted bail to him vide order dated 21.10.2021.

6. The Union of India has preferred an application for

cancellation of bail granted to the applicant/accused vide order dated 21.10.2021. It is contended in the application for cancellation of bail that even after granting of bail the applicant is in custody. Applicant received valid new Nigerian passport after modification of bail order was allowed by this Court. Applicant had applied for visa despite grant of bail accused is not in a position to fulfil the condition, hence bail granted to the applicant/accused may be cancelled.

7. Learned Counsel for the applicant accused submitted that bail was granted to the applicant for violation of Article 22 of the Constitution of India. Despite bail being granted vide order dated 21.10.2021, the applicant continued to be in custody for a period of two years thereafter for one of fulfilling conditions. The applicant was issued fresh Nigerian Passport. The applicant is willing to deposit the passport with the Court or Investigating Officer. Application for visa preferred by the applicant has been rejected. Trial has not commenced. There is no progress in the trial. Condition of furnishing visa may be relaxed. The applicant cannot be kept in custody for indefinite period. The applicant was granted bail in the previous cases. In one case the applicant was convicted. Maximum sentenced imposed was two years. Sentence of imprisonment has been suspended by this Court vide order dated 21.2.2023 passed in Criminal Misc. Application No. 616 of 2022(F) in Criminal Appeal No. 615 of 2022(F).

8. The Supreme Court in ***SMWP(criminal) No.2/2021 dated 31.1.2023 reported in 2023 LiveLaw(SC) 76*** has issued directions while considering the issues relating to under trial prisoners who continue to be in custody despite having granted bail on account of their inability to fulfill the conditions. Order indicates that report was submitted before the Hon'ble Supreme Court stating that 5,000 under trial prisoners who were in jail, despite grant of bail and legal assistance were provided to 2,357 persons and 1,417 persons have since been released. The Court also noted that one of the main reason flagged why the accused are in jail despite the grant of bail is that he may be an accused in multiple cases and not willing to furnish bail bonds until he is given bail in all the cases as under trial custody will be counted in all the cases. It was also pointed out that to ensure that other remaining under trial prisoners who are unable to furnish surety or bail bonds due to poverty, NALSA is in the process of creating a master data of all such under trial prisoners in excel sheet with all relevant details, including, reasons for non-release and steps qua persons who are unable to furnish bail bonds or surety are being taken up with the respective SLA/DLSA. Court then directed that Court which grants bail to an under trial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent immediately. The Jail Superintendent would be required to enter the

date of grant of bail in the e-prisons software. If the accused is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and to assist the prisoner in all ways possible for his release. NIC to make necessary attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA with a view to find out the economic condition of the accused or , may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition. In cases where the under trial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties. If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo motu take up the case and consider whether the conditions of bail require modification/ relaxation. One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It was suggested that the courts may not

impose the condition of local surety.

9. Learned Deputy Solicitor General of India for the respondent submitted that applicant being a foreign national is required to comply with the conditions imposed while granting bail. Mere production of passport would not be sufficient. Application for visa has been rejected. On account of the visa stay of the applicant in this country would be illegal. Applicant is not entitled to be released on bail. Applicant is having criminal antecedents. In spite of grant of bail on 21.10.2021, the applicant has not produced visa and now the application for visa has been rejected. Question of modification of conditions of bail order does not arise as the order granting bail deserves to be cancelled. Hence, the application for modification made be rejected and application for cancellation of bail may be allowed.

10. Applicant is in custody from 7.3.2021. The applicant was granted bail vide order dated 21.10.2021 on the ground that there is violation of Article 22(2) of the Constitution of India. The applicant was not produced before nearest Magistrate within 24 hours on his arrest and detention had taken note of the criminal antecedents of the applicant. Court felt that stringent conditions should be imposed against the applicant while granting bail. Applicant applied for fresh passport and it has been granted. However, application for visa is rejected. Deputy Solicitor General of India for the respondent

submitted that applicant can take appropriate steps for challenging the order rejecting the application for visa. However, it is required to be noted that inspite of bail being granted to the applicant he has remained in custody for a period of about two years after grant of bail. This application is pending in this Court from April 2023. It has been pointed out that similar conditions imposed while granting bail was challenged by one of the accused before the Apex Court and the said proceedings are pending. Application was adjourned from time to time on that ground.

11. Learned counsel for the applicant however submitted that applicant's case can be distinguished. This application may be heard as applicant in jail for two years after grant of bail. Grievance of the accused who had challenged the order of condition for submission of visa before the Apex Court is that such condition should not be imposed. However, in the present case application for visa has been rejected and passport has been issued to applicant.

12. Considering the fact that the applicant has remained in custody for about two years after grant of bail and since passport has been issued to the applicant and applicant is willing to deposit the passport. The condition of producing visa can be relaxed. The applicant has been in custody since last two years after grant of bail. No case is made out for cancellation of the bail granted to the applicant. In respect of rejection of visa and stay of the accused

without valid visa, respondent will be at liberty to initiate appropriate proceedings.

O R D E R

(i) Conditions No. (b) and (c) in order dated 21.10.2023 passed by this Court in Criminal Application (Bail) No. 585 of 2021 is modified. Condition of production of valid visa stands relaxed.

(ii) Applicant shall produce his passport and the same shall be deposited with investigating officer before he being released on bail.

(iii) Other conditions shall remain intact.

(iv) Criminal Misc. Application No.1 of 2023 seeking cancellation of bail granted vide order dated 21.10.2021 stands rejected.

(v) Both the applications are disposed of.

PRAKASH D NAIK, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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