

(2021) 05 UK CK 0025

In the Uttarakhand High Court

Case No : Correction Application (MCRC) No. 139 Of 2021 In First Bail
Application No. 721 Of 2020

David Morrison

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 11-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439, 441, 445
Indian Penal Code, 1860 — Section 120B, 420
Information Technology Act, 2000 — Section 66
Foreigners Act, 1946 — Section 14

Citation : (2021) 05 UK CK 0025

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Lalit Sharma, Lata Negi

Final Decision : Allowed

Judgement

Alok Kumar Verma, J

1. This Correction Application (MCRC) No.139 of 2021) is filed by Mr. Lalit Sharma, the learned counsel for the applicant for permission to permit

him to correct the name and address of the applicant in the Bail Application No.721 of 2020. He further prayed that the bail order dated 23.07.2020 be corrected accordingly.

2. Heard Mr. Lalit Sharma, learned counsel for the applicant and Ms. Lata Negi, learned Brief Holder for the State on the Correction Application (MCRC) No.139 of 2021 through video conferencing.

3. Facts, to the limited extent necessary, are that an FIR was registered on 01.04.2019 against the present applicant along with one co-accused on the

basis of a written report lodged by the informant Abhishek Khurana. According to the informant, through hatching a criminal conspiracy by the

present applicant along with the co-accused, they lured to win the lottery of five lakhs pounds, cheated and fraudulently took Rs.25 lakhs by sending

SMS on behalf of Coca Cola Company on mobile phone of Gaurav Kumar, uncle of the informant. After registration of the FIR, it was found that the

present applicant and the co-accused were residing in India without a valid Visa and Passport.

4. An application for regular bail (Bail Application No.721 of 2020) was moved on behalf of the applicant under Section 439 of the Code of Criminal

Procedure, 1973 for grant of regular bail in connection with Case Crime No.44 of 2019, registered with Police Station Kunda, District Udham Singh

Nagar for the offence punishable under Sections 420, 120B of the I.P.C., Section 66 of the Information Technology Act, 2000 and Section 14 of the

Foreigners Act.

5. At the time of hearing of the said bail application, it was argued on behalf of the applicant that when the applicant along with co-accused were

coming to Udham Singh Nagar in a taxi, the taxi driver fled away with all the belongings of the applicant and the co-accused. Those bags also

contained the passports of the applicant and the co-accused. The applicant and the co-accused were apprehended by the police. The charge-sheet

was submitted and the co-accused of the similar role was granted bail by the Coordinate Bench of this High Court.

6. The said Bail Application No.721 of 2020 was allowed on 23.07.2020 on the following conditions : -

â??8. The bail application is allowed on the following conditions:-

(i) the applicant shall be released on bail on furnishing a bond with two sureties of like amount, one of whom must be a local surety, to the

satisfaction of the court concerned;

(ii) after the passport is re-issued as per rules, the Foreigners Regional Registration Officer is directed to endorse the Visa of the applicant

according to law, prior to release from the jail concerned and, such endorsement can carry a limited validity co-terminus with the

completion of the trial. The superintendent of jail concerned shall ensure that the applicant is released only after endorsement of his Visa.

(iii) after re-issue his passport, the applicant shall surrender it before the court concerned and shall report his place of residence before the

court concerned and the local police station.

(iv) the applicant shall report his presence before the local police station every month.

9. The applicant-accused shall be produced in custody before the competent authority for the purpose of re-issuance of his passport for

which the Senior Superintendent of Police/ Superintendent of Police of the district concerned will take necessary action. The SSP/SP of the

district concerned will be informed through the learned counsel appearing for the State.â??

7. Thereafter, the learned counsel for the applicant moved a Criminal Misc. Application No.902 of 2020 to set aside the order dated 08.10.2020,

passed by the learned Additional Chief Judicial Magistrate, Kashipur in Criminal Case No.4069 of 2019, â??State vs. David Morrison and othersâ??,

whereby, the application of the applicant-accused to release the applicant-accused on bail, after depositing cash amount in lieu of executing surety

bond, was dismissed.

8. In the said application, the case of the applicant was that the passport of the applicant-accused was deposited before the concerned Magistrate and

because the applicant is a foreigner, he was unable to arrange sureties. Therefore, he offered to deposit cash amount in lieu of executing surety bond.

9. The said Criminal Misc. Application No.902 of 2020 was allowed on 13.01.2021. Paragraph Nos. 6 to 10 of the order dated 13.01.2021 are

reproduced hereunder :-

â??6. Section 441 of the Code provides that before any person is released on bail or released on his own bond, a bond for such sum of money as the

police officer or court, as the case may be, thinks sufficient shall be executed by such person and when a person so directed to execute the bond

either with surety or without surety is unable to furnish surety, then under Section 445 of the Code, he is permitted to deposit a sum of money or

Government promissory note.

7. In the first instance, the applicant-accused was directed to furnish surety bond. He is unable to execute surety bond. The offer to deposit cash

surety came from the applicant-accused.

8. Section 445 of the Code is meant for the benefit of the person who is unable to find a surety. The applicant-accused is a foreigner and he is not able to furnish sureties. The same does not debar him from being admitted to bail.

9. In the facts and circumstances of the case, the order dated 08.10.2020, passed by learned Additional Chief Judicial Magistrate, Kashipur, District

Udham Singh Nagar in Criminal Case 4069 of 2019 *State vs. David Morrison and others* is liable to be set aside. Accordingly, the impugned

order dated 08.10.2020 is set aside. The applicant-accused is permitted to deposit the cash amount, a reasonable amount, to the satisfaction of the

court concerned, in lieu of executing surety bonds.

10. Accordingly, this Criminal Misc. Application stands allowed in the terms mentioned above.

10. The instant correction application has been filed on behalf of the applicant with the averments that the real name of the applicant is *Oghene*

Jackson Onoriode and he is a *Nigerian* citizen. His address is *No.50 Crudas Road, Sapele Delta State Nigeria* and his passport number

was A01266320. The said passport was deposited before the trial court. But, the police, in his arrest memo and other subsequent documents, wrongly

mentioned his name as *David Morrison* and his residence was shown as *Gambia*. The correct name and address were mentioned in his

passport. The applicant made several applications to the police authorities as well as to the court concerned, but till date the name of the applicant is

not corrected, therefore, he could not be released from the jail.

11. Ms. Lata Negi, the learned Brief Holder for the State submitted that the original name of the applicant is *David Morrison S/o Mr. Morrison*,

residence of *50C-OGODO, DALTA GAMBIA* as shown in the passport *No.PC337492* and Visa *No.BJ2248019*. She further submitted that a fresh

passport of the present applicant has been issued by the Embassy of Nigeria and as per this fresh passport, the name of the present applicant is

Oghene Jackson Onoriode.

12. During the arguments, Ms. Lata Negi, the learned Brief Holder for the State submitted that the bail application of the applicant has already been

allowed and in the facts and circumstances of the case, the State has no objection on the correction application and the submissions of the learned

counsel of the applicant.

13. Having considered the submissions of learned counsel for both the parties, the Correction Application (MCRC) No.139 of 2021 is allowed. The

bail order dated 23.07.2020, passed in the Bail Application No.721 of 2020 is corrected accordingly.

14. The learned counsel for the applicant requested two daysâ?? time to file the corrected memo of the bail application. In the interest of justice, time is granted.

15. After filing the corrected memo of the bail application, it is directed that the applicant-accused be released on bail as per terms of the order dated

23.07.2020, passed in the Bail Application No.721 of 2020 and order dated 13.01.2021, passed in Criminal Misc. Application No.902 of 2020.