

**IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL**

ON THE 13<sup>th</sup> DAY OF JANUARY, 2021

BEFORE:

HON'BLE SHRI JUSTICE ALOK KUMAR VERMA, J.

CRIMINAL MISC. APPLICATION NO. 902 OF 2020

**BETWEEN:**

David Morrison ..... Applicant

(By Shri Lalit Sharma, learned Advocate)

**AND :**

State of Uttarakhand ..... Respondent

(By Shri Deepak Bisht, learned Brief Holder for the State)

*The Criminal Misc. Application No. 902 of 2020 coming on for hearing this day, Hon'ble Shri Justice Alok Kumar Verma delivered the following Order:*

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**ORDER**

This Criminal Misc. Application is filed by the applicant-accused to set aside the order dated 08.10.2020 passed by learned Additional Chief Judicial Magistrate, Kashipur in Criminal Case No.4069 of 2019, "State vs. David Morrison and others", whereby, the application of the applicant-accused to release the applicant-accused on bail after depositing cash amount in lieu of executing surety bond.

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2. Heard Mr. Lalit Sharma, learned counsel for the applicant and Mr. Deepak Bisht, learned Brief Holder for the State.

3. The applicant-accused moved an application before this Court under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') 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, 120-B of the I.P.C. Section 66 of the Information Technology Act, 2000 and Section 14 of the Foreigners Act.

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

*"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."*

5. Learned counsel for the applicant submitted that passport of the applicant-accused is deposited before the concerned Magistrate and because the applicant is foreigner, he is unable to arrange sureties. Therefore, he offered to deposit cash amount in lieu of executing surety bond. The said prayer of the applicant-accused has been rejected by the impugned order.

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.

(Alok Kumar Verma, J.)

JKJ/Neha