



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CR. APPL. NO. 93 OF 2011

GOVINDA BHUSAL CHHETRI..... APPLICANT

VERSUS
REPUBLIC.....RESPONDENT

RULING

This is an application for Revision.

The applicant, GOVINDA BHUSAL CHHETRI, has told the court that he was on trial for the offence of Obtaining Money by False Pretences **contrary to section 313 of the Penal Code.**

The plea was taken on 9th February 2012, and the applicant pleaded “Not Guilty.” The trial date was then fixed for 4th April 2012.

In the meantime, the applicant was ordered to be released on a cash bail of KShs.5,000,000/-.

On the next day, the applicant’s lawyer indicated to the court that his client wished to make an application. The court set down that application for hearing on 13th February, 2012.

Mr. Nyaribo, the learned advocate for the applicant did ask the trial court to vary the bail terms.

At the same time, the prosecution asked the court to vary the bail terms.

The Prosecution’s application was premised on the fact that the applicant was not a citizen of Kenya. He is a citizen of Nepal.

In the light of that fact, the prosecution asked the trial court to order the applicant to deposit his passport in court. The prosecution also sought a Kenyan Surety, as the applicant was said to be of no known fixed abode.

On the other hand, the applicant asked for a reduction of the bail amount from KShs.5,000,000/- to about KShs.500,000/-. The applicant explained that although he did carry on business in Kenya, he did not have the ability to raise KShs.5,000,000/-.

After giving due consideration to the applications, the learned trial magistrate noted that the paramount consideration in setting the terms for Bond or Bail, was that the accused should attend trial.

The trial court made it clear that Bond or Bail

“is never to punish the accused as he is presumed innocent until proven guilty. However, the nature of the offence and the amount, if any involved, must be taken into account.”

The court went on to find that the bail sum of KShs.5,000,000/- was reasonable. The court also ordered the applicant to deposit his passport in court. Finally, the court ordered the applicant to provide a Kenyan surety.

The applicant was dissatisfied with the decision of the trial court, hence this application for revision.

Ms Mwanza, learned advocate for the respondent, submitted that when an accused is granted bail, the same ought not to be linked to a surety.

Pursuant to section 123 (3) of the Criminal Procedure Code, the High Court may reduce the bail required by either the subordinate court or by the police officer.

Both the applicant and the respondent are in agreement, that the appropriate sum for bail is to be determined with reference to the nature of the offence as well as the value of the subject matter of the said offence.

In this case, although the applicant knew that he ought to have made available the charge sheet, (as is clear from his Statement of Facts), he failed to do so. When the court drew the attention of Mr. Nyaribo advocate, about the need to make available the charge sheet, he promised to comply, by the 16th of March 2012. Regrettably, the advocate for the applicant failed to honour his word.

In the result, the applicant has deprived the court of an essential ingredient in the determination of his application. Accordingly, there is no basis, in fact, for the orders for the revision of the bail.

Dated, Signed and Delivered at Nairobi, this 27th day of March, 2012.

.....
FRED A. OCHIENG
JUDGE