

**Criminal Revision**Present: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 03.03.2010

**C.R.R. No. 153 of 2010****Ernest Uchenna & Anr.****versus****State of West Bengal****Point:**

**LOCAL SURETY:** Petitioners are foreign nationals - Imposition of furnishing local surety as precondition of bail, whether justified - Code of Criminal Procedure, 1973 S.439(1)(b).

**Fact:** The petitioners, who are foreign nationals and were arrested under Sections 120B/420/467/468/471 of the Indian Penal Code, have filed the instant Revisional application challenging the order of rejection of the application for relaxation of condition of bail to furnish local surety.

**Held:** The petitioners are foreign nationals, therefore, by imposing condition of furnishing local surety, Learned Magistrate has not committed any mistake. Such condition was definitely imposed to avoid the likelihood of their evading due of process of law.

(Paragraph – 6)

**Case cited:** Moti Ram Vs. The State of M.P., reported in AIR 1978 SC 1594

For Petitioners : Mr. Bibhasaditya Chakraborty

For State : Mr. Swapan Kumar Mullick

The Court: The written instruction filed by the learned advocate for the State be kept with the record.

2. The present petitioners who are Nigerian Citizens were arrested by the police in connection with Phoolbagan Police Station (D.D. Case) No. 131 dated 15.5.09 under Sections 120B/420/467/468/471 of the Indian Penal Code. Thereafter the Learned Additional Chief Judicial Magistrate, Sealdah released them on bail on a bond of Rs. 5,000/- each with two sureties one of whom must be local and with a further condition that they shall not leave India without the prior permission of the Court. Then the petitioners moved the Learned Court below for relaxation of condition of bail so far that relates to furnishing of the local surety. However, such application was rejected.

3. Being aggrieved by such order of rejection, the petitioners have moved this criminal revisional application before this Court.

4. The background facts of the case are as follows;

“One Ms. Sunanda Banerjee residing within the jurisdiction of Phoolbagan Police Station lodged a complaint to the Deputy Commissioner of Police, Detective Department, Kolkata alleging that she received an S.M.S. on 26<sup>th</sup> April, 2009 at around 10.58 A.M. that she own five lakhs U.S. Dollar from ‘SHELL Petroleum Development Corporation’ of England and was asked to contact with the mail ID. The said call was received by Ms. Banerjee in her mobile phone from Mobile No. 9711887867 allegedly from one Ben Johan Kenedy, who was talking in British accent she was further asked to deposit Rs. 35,000/- and Rs. 37,500/- at the ICICI Bank Account No. 061001505227 for customs clearance. Thereafter, she was further asked by the said Kenedy to deposit a sum of Rs. 50,000/- again in the ICICI Bank in Account No. 634301029321.

Accordingly, she deposited the aforesaid amount of money in those accounts. Subsequently, when she was once again asked to deposit further sum, she become suspicious and informed the police.

5. Upon receipt of her complaint a specific Police case was registered and investigation was commenced. During a joint investigation by the Kolkata Police and the Crime Branch, Delhi Police, the mobile phone from which the said Sunanda Banerjee was receiving phone calls were traced out and then the petitioners were nabbed by the police and sufficient implicating materials were found against them.

6. Admittedly, the present petitioners are foreign nationals, therefore, by imposing condition of furnishing local surety, in my opinion, Learned Magistrate has not committed any mistake. Such condition was definitely imposed to avoid the likelihood of their evading due of process of law. The decision cited by the Learned Counsel of the petitioner in the case of Moti Ram Vs. The State of M.P., reported in AIR 1978 SC 1594, the accused a poor mason and an Indian citizen was asked to furnish a surety of sufficient properties and such surety must be from the accused's own district and the Court refused to accept the suretyship of the petitioner's brother as his properties were situated in some other district. But the case in hand is completely different and here two foreign nationals are involved who invented a very fantastic modus operandi to cheat the citizens of India.

7. This criminal revision has no merit and accordingly, stands dismissed.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**