

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1769 OF 2014

Yosef Ben Shoshan

... Petitioner.

V/s.

State of Maharashtra

... Respondent.

Mr. A. P. Kulkarni, Advocate for the Petitioner.

Ms. V. S. Mhaispurkar, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 17th APRIL, 2015

P.C. :

1 Admit. By consent of the parties, heard finally at the admission stage.

2 Heard the learned counsel appearing for the petitioner and the learned APP for the State.

3 The petitioner is one of the accused in the charge-sheet bearing criminal case no. 4550 of 2005 pending in the court of Judicial Magistrate, First Class, Pune for the offences punishable under sections 120B, 468, 471 and 420 read with section 34 of the Indian Penal Code. The petitioner is admittedly a citizen of Israel and he was facing trial under the NDPS Act. He is acquitted of the said charge but he was later

on prosecuted for overstaying in India under section 14 of the Foreigners Act, 1946 for which he was convicted and was sentenced to suffer rigorous imprisonment for about three months. That period also he has undergone.

4 In the present case, the allegations against the petitioner and others including some officers working in Mantralaya, Mumbai are that they had entered into a conspiracy to extend the visa of certain persons who were not entitled to have extended visa. The petitioner is one of such person. Admittedly, the rubber stamp was found on his passport which indicates extension of visa.

5 I have gone through the earlier observations made by the co-ordinate bench (Coram : Abhay M. Thipsay, J). It appears that the investigating officer had made a statement before the court that the stamp and signature on the passport is genuine. This does not absolve the petitioner of the charge of conspiracy. The prosecution case is that the petitioner and others including the some government officials had entered into a conspiracy to extend visas to the persons who were not entitled for the same. Therefore, the fact that the stamp and signature on the visa extension though genuine, does not make it a genuine document. If a particular officer has prepared a document which is not correct, it falls under the category of false document. Preparing the false document for

a pecuniary advantage amounts to forgery which is punishable under section 465 of the Indian Penal Code. The petitioner, prima facie, is a part of the conspiracy. Though his application has been rejected by the learned Magistrate on certain other grounds, however, the crux of the matter is that there is strong prima facie case that the petitioner was a part of the conspiracy for committing the offence. At this stage, the learned counsel for the Petitioner has submitted that the petitioner is suffering from Hepatitis-C and that he required immediate expert treatment. It is submitted that the case is not being taken up for hearing since long. The learned counsel has submitted that the petitioner may plead guilty to the charges levelled against him and may pray for leniency before the trial court.

6 For all these reasons, I pass the following order :

- i. The present writ petition stands dismissed.
- ii. The Petitioner is at liberty to appear before the learned trial Magistrate and make an application for pleading guilty to the charges.
- iii. The trial Magistrate shall immediately entertain said application and decide as to whether the plea of the petitioner shall be accepted or not.

iv. It need not be stated here that the learned trial Magistrate will take into consideration all relevant factors including health condition of the petitioner while deciding the quantum of the sentence, if he accepts the plea of petitioner.

7 Order accordingly.

(JUDGE)

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