

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2015

DELIVERED ON : 02.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.9256 of 2015

1.S.N.Amarnath
2.Rosary Jecinta

..Petitioners

Vs

1.The Commissioner of Police
Central Crime Branch
Egmore, Madras 600 008.

2.State rep by
Sub Inspector of Police
Team-II, C.C.B.
Egmore, Madras 600 008.

3.The Immigration Officer (FRRO)
Meenambakkam Airport
Meenambakkam
Chennai 600 027.

4.The Immigration Officer (FRRO)
Office of the Immigration
New Delhi.

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondents to withdraw the Look Out Circular issued on 10.05.2010 by the 2nd respondent against the petitioners in Crime No.54 of 2009 now numbered C.C.No.6334 of 2009 pending on the file of the XI Metropolitan Magistrate, Saidapet, Madras.

For Petitioners Mr.R.Sankarasubbu
For respondents Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

This petition has been filed to direct the respondents to withdraw the Look Out Circular issued on 10.05.2010 by the 2nd respondent against the petitioners in Crime No.54 of 2009 now numbered C.C.No.6334 of 2009 pending on the file of the XI Metropolitan Magistrate, Saidapet, Madras.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. The petitioners herein are facing trial for offences under Sections 120(b), 465, 467, 468, 471 and 420 IPC in C.C.No.6334 of 2009 on the file of the learned XI Metropolitan Magistrate, Chennai. The petitioners are now seeking permission from this Court for going abroad on the ground that, the second petitioner requires specialised treatment in Parkinson Hospital, New Jersey at the USA. It is seen that this Court had earlier granted permission to the petitioners by the following orders:

Sl.No.	Date	Description
1	21.12.2010	Cr1.O.P.No.22695 of 2010
2	16.06.2011	Cr1.O.P.No.22695 of 2011
3	16.04.2012	Cr1.O.P.No.22695 of 2012
4	02.04.2013	Cr1.O.P.No.7306 of 2013
5	05.09.2013	Cr1.O.P.No.7306 of 2013
6	31.10.2013	Cr1.O.P.No.27741 of 2013

4. When the matter came up for hearing before this Court on 09.06.2015, this Court called for the records from the trial Court and noticed that the petitioners were not properly attending the Court, on account of which even the charges were not framed. Therefore, this Court directed the petitioners to appear before the trial Court on 15.06.2015 and file an affidavit undertaking that,

"[a] the trial can proceed in their absence and that their nominated counsel [whose name they should give in the affidavit] will conduct the trial and examine the witnesses and that they will not repudiate the same;

[b] that they will not cause delay and co-operate with the prosecution;

[c] that the nominated counsel will be present regularly for the trial and that he will cross examine the witnesses in their absence;

[d] that they will not dispute their identification by the witnesses and will not dispute their identity;

[e] they would not recall the witnesses to prolong the case

[f] they shall also disclose their address in the USA and passport number."

5. The respondent police have also filed their Status Report, wherein it is stated as follows in paragraph nos.7 and 8:

"7. It is submitted that the during the course of pending trial, A-1 and A-2 are went twice to United States by way of filed petition to visit to USA to see their daughter and for their treatment before the Honourable High Court, Madras vide CrI.O.P.No.22695 of 2010 and CrI.O.P.No.7306 of 2013 and the same was granted on 16th April, 201 and 02.04.2013 respectively.

8. It is further submitted that A-1 and A-2 filed a petition seeking to withdraw the Look Out Circular issued on 10.05.2010 by the 2nd respondent/Sub-Inspector of Police in C.C.No.6334 of 2011 dated 23.11.2011 in Crime No.54/2009 before the Hon'ble High Court, Madras."

[extracted verbatim]

6. Pursuant to the order passed by this Court on 09.06.2015, it is seen that both the petitioners appeared before the trial Court on 15.06.2015 and have complied with the order passed by this Court, by filing the undertaking affidavit. The first petitioner/S.N.Amarnath has filed an affidavit before this Court wherein, it is stated as follows in paragraph nos.1 and 2.

"1. I humbly submit that this Hon'ble Court passed in the order above CrI.O.P on 09.06.2015 directing me along with the 2nd Accused to appear before the learned 11th Metropolitan Magistrate on 15.06.2015 in person and file affidavit of undertaking which certain conditions.

2. I state that I went to Court and I found that the 11th Metropolitan Magistrate is on leave for 2 days and it was taken up before the 4th Metropolitan Magistrate who is In charge. I filed the affidavit and it was taken up at 3 P.M. the learned Magistrate compared the conditions laid down imposed in the order copy and my compliance and I was directed to appear on the next hearing date. Accordingly I complied the condition laid by this Hon'ble Court."

7. Rosary Jecinta/the second petitioner has filed an affidavit before this Court, wherein it is stated as follows in paragraph nos.2 and 3:

"2. I state that I filed the above petition seeking for a direction against the 2nd respondent to withdraw the Look Out Circular issued on 10.05.2010 against the petitioner in

Crime No.54 of 2009 now renumbered as C.C.No.6334 of 2009 on the file of the 11th MM, Saidapet, Madras. In the above matter copies were issued on 15.04.2015 and questioning was finished on 23.04.2015. Both the petitioners were represented by counsel and my counsel was attending all along on the hearing date.

3. I submit that I had Gallbladder contusion during January 2013 when I was in United States along with our daughters and I underwent treatment in Princeton Hospital, New Jersey. I was advised that I had to come for check up once in a year to Princeton Hospital and undergo Surgery after proper check up in Appollo Hospital Madras when the contusion was ripe. Hence it has become necessary for me to go to United States and return. The 1st petitioner has to accompany me every time to drop there and while return. The petitioners every time obtained orders of suspension of the Look Out Circular from this Hon'ble court and property complying the conditions laid down by this Hon'ble Court."

8. The learned counsel for the petitioners submitted that it will be sufficient if Look Out Circular is suspended for three months for the first petitioner and six months for the second petitioner, inasmuch as the second petitioner has to undergo medical treatment.

9. That the first petitioner who is an Advocate, has managed to prolong the trial from 2009 to 2015. This fact cannot be lost sight of. But on sheer humanitarian consideration, this Court is of the opinion that, the permission as sought for deserves to be granted to the petitioners in the interest of justice. In the result, this petition is allowed with the following terms:

The respondents are directed to suspend the Look Out Circular issued on 10.05.2010 in Cr.No.54 of 2009, now numbered as C.C.No.6634 of 2009, pending on the file of the XI Metropolitan Magistrate, Saidapet, Chennai, till 31st December 2015 from the date of receipt of a copy of this order in respect of both petitioners. The first petitioner shall return to India and appear before the trial Court on 9th October, 2015 and the second petitioner shall appear on 22nd December 2015. In the meantime, the trial Court is directed to proceed with the trial and if the accused protract the trial for any reason, it is open to the trial Court to take steps to cancel their bail relying upon the judgment of the Supreme Court in State of Uttar Pradesh v. Shambhu Nath Singh, [JT 2001 (4) SC 319] and P.K.Shaji vs. State of

Kerala [(2005) AIR SCW 5560], as if the bail has been granted by the trial Court.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Commissioner of Police
Central Crime Branch
Egmore, Madras 600 008.

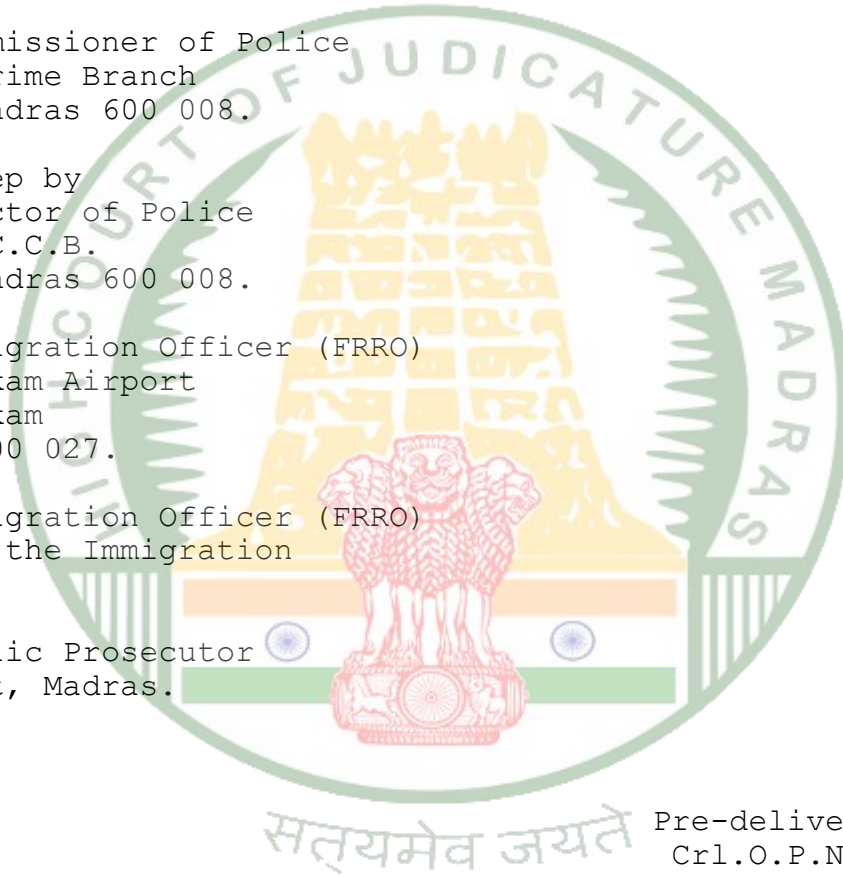
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High Court, Madras.

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Pre-delivery order in
CrI.O.P.No.9256 of 2015

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