



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 07.12.2015

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl.O.P.(MD).No.22578 of 2015

Mohamed Yasin

.. Petitioner

.vs.

1.State through

The Inspector of Police,
All Women Police Station,
Trichendur,
Tuticorin.
(In Crime No.12 of 2015)

2.Shakila

(R2 impleaded as per order dated 07.12.2014
made in M.P.(MD).No.1 of 2015)

.. Respondent

Prayer: Criminal Original Petition filed under Section 439(1)(b) of the Code of Criminal Procedure, to set aside the bail condition imposed in Crl.M.P.No.10399 of 2015 by the learned Judicial Magistrate, Tiruchendur vide order dated 26.10.2015 directing the petitioner to surrender his passport before the Court and to consequently direct the learned Judicial Magistrate, Tiruchendur to return the passport bearing No.M5255911.

For Petitioner :Mr.S.M.A.Jinnah

For R1 :Mr.K.Anbarasan
Government Advocate(Crl.side)

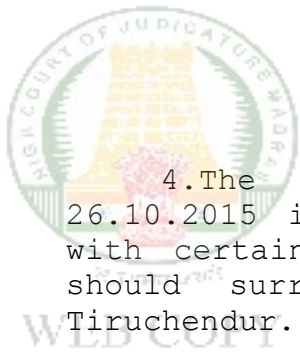
For R2 :Mr.P.Senthurpandian

ORDER

The petitioner has filed this application seeking to set aside the bail condition imposed in Crl.M.P.No.10399 of 2015 by the learned Judicial Magistrate, Tiruchendur vide order dated 26.10.2015 directing the petitioner to surrender his passport before the Court and to consequently direct the learned Judicial Magistrate, Tiruchendur to return the passport bearing No.M5255911.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel for the second respondent.

3.The petitioner was arrested by the respondent police on the complaint given by the de-facto complainant, second respondent herein for offence under Sections 498(A), 406 and 506(i) of I.P.C., and Section 4 of TNPWH Act in Crime No.12 of 2015.



4.The learned Judicial Magistrate, Tiruchendur by order dated 26.10.2015 in CrI.M.P.No.10399 of 2015 enlarged the petitioner on bail with certain conditions. One of the conditions is that the petitioner should surrender his passport to the Judicial Magistrate Court, Tiruchendur. The petitioner has also complied with the said condition.

5.Now, the petitioner has come out with the present petition seeking to set aside the condition imposed by the learned Judicial Magistrate, Tiruchendur in CrI.M.P.No.10399 of 2015 vide order dated 26.10.2015 directing the petitioner to surrender his passport before the Court.

6.The learned counsel for the petitioner submitted that the condition imposed on the petitioner to surrender his passport No.M5255911 to the Court is to be set aside, so as to enable the petitioner to go to United Arab Emirates to get standard treatment for his illness. The learned counsel has relied on the judgment of Apex Court reported in **(2008) 2 Supreme Court Cases (Cri) 121 (SURESH NANDA VS. CENTRAL BUREAU OF INVESTIGATION)** in which para No.6 reads as under:

"6.On the other hand, the learned Additional Solicitor General appearing for the respondent submitted that the passport was seized and impounded by exercising the powers under Section 102 read with Sections 165 and 104 of the Code of Criminal Procedure (hereinafter referred to as "CrPC"). He further contended that the power to retain and impound the passport has been rightly exercised by the respondent as there is an order dated 03.11.2006 passed by the learned Special Judge for CBI exercising the power under Section 104 Cr.P.C."

7.In The order passed by this Court dated 01.04.2015 in CrI.R.C.t(MD). No.145 of 2015, para No.14 reads as under:

"14.In the light of the said facts and circumstances, this Court is of the view that there cannot be any impediment in ordering the return of the passport to the petitioner by way of interim measure, so as to enable him to attend his business activities in Kuala Lumpur, Malaysia, subject to certain conditions."

8.The learned Government Advocate (CrI.side) opposed the petition on the ground that if the petitioner is permitted to leave India he will abscond, the progress of the investigation will be hampered.

9.Considering the facts and circumstances of the case and also considering the judgement of the Apex Court and the order of this Court, I am inclined to set aside the condition for a limited period of 45 days by imposing some conditions.

10.Accordingly, this Court sets aside the bail condition imposed in CrI.M.P.No.10399 of 2015 by the learned Judicial Magistrate, Tiruchendur vide order dated 26.10.2015 directing the petitioner to surrender his passport before the Court and the learned Judicial Magistrate, Tiruchendur is directed to return the passport of the petitioner for a period of 45 days to travel abroad for the purpose of taking medical treatment on the following conditions:

(i)The petitioner shall file an affidavit before the learned Judicial Magistrate, Tiruchendur informing his address where he will be available for contact during his period of stay away from India as well as contact telephone/cellphone number while abroad and also undertake to appear before the Court below as and when required;



(ii) The petitioner shall furnish the date of leaving India and the intending date of return to India to the Court of Judicial Magistrate, Tiruchendur.

(iii) The petitioner shall also undertake in the affidavit to return to India and place the passport in the custody of the said Court on or before 45 days from the date when he received the passport from the Judicial Magistrate Court, Tiruchendur and submit the passport to the said Court.

(iv) On compliance of above conditions, the Court of Judicial Magistrate, Tiruchendur is directed to return the passport.

(v) If the petitioner violates any one of the aforesaid condition, it is open to the prosecution to move this Court for cancellation of bail.

The criminal original petition is ordered accordingly.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

1. The Judicial Magistrate Court,
Tiruchendur.

2. The Inspector of Police,
All Women Police Station,
Trichendur,
Tuticorin.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.P.Senthurpandian, Advocate in SR.No. 70421

+1cc to M/S.S.M.A.Jinnah, Advocate in SR.No. 70199

TS/18.01.2016/3P-6C/PM-MP/SAR II

Cr1.O.P. (MD) .No.22578 of 2015

07.12.2015