



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2015

CORAM

THE HONOURABLE MR. JUSTICE M. KALYANASUNDARAM

Crl.O.P.(MD)No.8230 of 2015

WEB COPY

Saravanan

...Petitioner/Petitioner Accused

Vs.

State Rep. by
The Inspector of Police,
All Women Police Station,
Madurai South,
Crime No.2 of 2015

...Respondent/Respondent Complainant

PRAYER: Criminal Original Petition is filed under Section 439(1)(6) of the Code of Criminal Procedure to set aside the condition imposed on the petitioner in so far as the surrender of his original passport in Crl.M.P.No.3371 of 2015 dated 23.04.2015 on the file of the learned Principal District and Sessions Judge, Madurai and pass such other orders as this Court may deem fit and proper in the nature and circumstances of the case.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.A.P.Balasubramani
Govt.Advocate (Crl.side)

O R D E R

This petition has been filed to set aside the condition imposed on the petitioner in so far as the surrender of his original passport in Crl.M.P.No.3371 of 2015 dated 23.04.2015 on the file of the learned Principal District and Sessions Judge, Madurai.

2.The petitioner, who is arrayed as accused in Crime No. 2 of 2015 on the file of the respondent police for the alleged offences under Sections 498(A) and 406 IPC, filed this petition for modification of condition.

3.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) appearing for the State.

4.The learned Principal District and Sessions Judge while granting anticipatory bail to the petitioner directed the petitioner to surrender passport to the learned Judicial Magistrate, Additional Mahila Court, Madurai.

5. The learned counsel for the petitioner submitted that the defacto complainant has successfully completed M.A., M.Ed.,. The petitioner has passed only 10th standard and after the marriage in the year 2013, he went to abroad to earn his livelihood. Due to his absence in India, the defacto complainant lodged a false complaint against the



6. The learned counsel further submitted that as per the decision reported in **Suresh Nanda Vs. Central Bureau of Investigation** reported in **(2008) 2 Supreme Court Cases (Cri) 121**, the court cannot direct the accused to surrender passport. In the said judgment the Hon'ble Supreme Court has held as follows:

"18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C staetd that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a 'passport' is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while Cr.P.C is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edn., P.133). This principle is expressed in the maxim generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 Cr.P.C though it can impound any other document or thing"

7. As per the dictum laid down by the Hon'ble Apex Court and considering the fact of this case, the condition to surrender passport alone is deleted.

8. The petitioner shall furnish sureties within a period of two weeks from the date on which the order copy is made ready.

9. With the above direction, this petition is disposed of.

Sd/-

Assistant Registrar (Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge, Madurai

2. The Inspector of Police, All Women Police Station,
Madurai South.

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

+1cc to Mr. R. Shankar Ganesh, Advocate, SR.No.24245

CRL.O.P.No.8230 of 2015
23.04.2015

Ses

PA/05.05.2015/2P/5C (IT)