

**IN THE HIGH COURT OF BOMBAY AT PANAJI****Criminal Application (Main) No.129/2017**

MR.GUIDO BOTHE

**Applicant.****VERSUS**

STATE THROUGH THE OFFICER IN CHARGE

**Respondent**

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Shri A.D. Bhobe, Advocate for the Applicant.

Shri P. Faldessai, APP for the Respondents.

**CORAM : NUTAN D.SARDESSAI, J.****DATED : 26<sup>th</sup> MAY, 2017.****P.C.**

1. Heard Shri A.D.Bhobe, learned Advocate for the applicant and Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State.

2. Shri Bhobe, learned Advocate seeks the indulgence of this Court to allow permission to the applicant to travel abroad on account of the fact that his father is suffering from prostate cancer and is on his deathbed. The learned Advocate further contends that he has filed an affidavit of Shri Krishna Swaminathan S/o D.Swaminathan, Commodore in the Indian Navy with Headquarters at the Southern Naval Command who assures to ensure the presence of the applicant in India within the time limit permitted by this Court for him to travel abroad. Besides, Shri Bhobe, learned Advocate for the applicant submits that the wife of the applicant who is a co-accused in the criminal

proceedings filed against them for the offence punishable under Section 420 of the Indian Penal Code would also furnish her affidavit assuring to ensure the presence of the applicant back in India from Germany in the event he is granted permission to travel abroad to see his ailing father who is on his deathbed due to the terminal ailment of prostate cancer.

3. Shri Bhobe, learned Advocate for the applicant otherwise submitted that the vessels built by the applicant for the complainant are also available which would furnish the necessary security to ensure his presence back in India in the event he is granted permission to travel overseas i.e. to Germany. The main apprehension canvassed by Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State is that looking to the nature of the offence alleged against the applicant and the amount involved in the crime, there is least likelihood of the applicant returning to India to face trial in the event he is granted permission for a limited duration to travel to Germany.

4. The applicant was granted the benefit of bail alongwith his wife by the learned Magistrate for the commission of the offence punishable under Section 420 IPC, subject however to the condition that he would not leave the country

without the prior permission of the Court. The learned Chief Judicial Magistrate however while dealing with the application of the applicant for permission to leave the country had been swayed by the fact that the matter was at a crucial stage and that granting permission to the applicant to travel abroad would not be appropriate as it would be difficult to ensure his presence in case he was allowed to travel abroad. It is not particularly in dispute that the applicant has been residing in India since the last about five years and has been available during the course of the proceedings before the learned Magistrate. The applicant also has his business in India apart from his wife who is the co-accused in the proceedings filed against them and who would continue to reside in India assuming for a moment that he is granted the permission to travel overseas.

5. The medical records produced on behalf of the applicant have not been seriously disputed on behalf of the State namely to the effect that the father of the applicant is suffering from prostate cancer with bone metastases and besides, there being repeated progress as evident from the CT-Scan report. The applicant otherwise seeks the indulgence of this Court to travel to Germany for a limited duration to see his ailing father who is on his deathbed which in the circumstances cannot be denied to him on the specious assumption that he

would not return to India to face trial. Moreover, Shri Krishna Swaminathan S/o D.Swaminathan, a Commandore in the Indian Navy has assured to ensure his presence in India in case he is granted the permission to travel abroad. Moreover, the wife of the applicant who is the co-accused alongwith him has also given a similar assurance by her affidavit filed in Court today. The applicant and his wife are present in the Court.

6. Thus, considering the fact situation where the father of the applicant is admittedly ailing from prostate cancer in the last stages and being on the deathbed, i am inclined to grant permission to the applicant to travel to Germany, however, for a period of two weeks which is inclusive of the date of his return to India. The applicant shall furnish the details of his address in Germany where he would be stationed during the said period which he shall furnish before the Court of the Chief Judicial Magistrate and otherwise furnish details of his mobile number. The applicant shall within fifteen days arrive in India and deposit his passport before the concerned Court. In these terms, the application is allowed.

7. The application stands disposed off accordingly.

**NUTAN D.SARDESSAI, J**

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