

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

CRIMINAL WRIT PETITION NO.3397 OF 2017

Ashok s/o Motilal Saraogi	...	Petitioner
V/s.		
The State of Maharashtra	...	Respondent

Mr.A.M.Saraogi appearing in person.
Mr.S.R.Shinde, APP for the Respondent/State.
Mr.Sutar, API, Azad Maidan Police Station.

CORAM : A.M.BADAR J.
DATED : 4th SEPTEMBER 2017.

P.C. :

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. Writ Petitioner is an accused in Crime No.288 of 2015 for offences punishable under Sections 465, 466, 467, 468, 471, 200, 209 r/w 120(b) of the I.P.C. with Azad Maidan Police Station, Mumbai.

3. By this writ petition the petitioner/accused is praying for quashing and setting aside the order dated 21st August, 2017 passed in Miscellaneous Application presented in criminal case No. 398 of 2017, which was registered on the basis of charge-sheet filed in pursuance to crime No. 288 of 2015.

4. Brief facts are thus :

Offence vide crime No.288 of 2015 came to be registered against the writ petitioner on the basis of report lodged by Haridas Kumbhar. The writ petitioner preferred an application for anticipatory bail bearing No.165 of 2015 wherein by an order dated 17th November, 2015 this court had directed the writ petitioner to deposit his passport with the Investigating officer. That is how passport of the writ petitioner is with the Investigating Officer. Ultimately, it is reported that the said application for anticipatory bail came to be rejected by this court.

5. The writ petitioner then surrendered himself before police authorities and then he preferred bail application bearing No. 264/BA/2016 before the learned Metropolitan Magistrate, Mumbai. Said application came to be allowed on 27th April, 2016. One of the condition of this bail order was to the effect that the writ petitioner should not leave jurisdiction of the Metropolitan Magistrate, Mumbai, without prior permission of the said court.

6. It is seen that subsequently the writ petitioner moved an application for relaxation of this condition prohibiting him from travelling outside Mumbai. The said request made vide application dated 14th September, 2016 came to be allowed on 5th October, 2016 by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai. The condition of the bail order dated 27th

April, 2016 the writ petitioner shall not leave jurisdiction of the said court without prior permission of the court came to be relaxed and the writ petitioner is directed to give prior intimation to the concerned police station before travelling outside Mumbai.

7. It is seen that subsequently the writ petitioner moved Miscellaneous Application with a composite prayer that he may be permitted to travel to U.K. with effect from 23rd August, 2017 for a period of 15 days and the prosecution be directed to return passport of the writ petitioner on such terms and conditions as the said court may deem fit. After hearing the parties on considering the say of the prosecution, the learned Metropolitan Magistrate was pleased to reject this application with reason that the offence alleged against the present writ petitioner is serious. The possibility of the writ petitioner evading trial cannot be ruled out. This order is impugned in the instant petition.

8. I heard the writ petitioner appearing in person. He argued that there is no condition while releasing him on bail prohibiting him to travel even outside Mumbai as the condition to that effect came to be relaxed by the learned Metropolitan Magistrate vide his order dated 5th October, 2016. The writ petitioner further contended that there is no order directing him to surrender his passport to the Investigating Officer because ultimately the order dated 17th November, 2015 passed by this court in anticipatory bail application came to be merged in final order, whereby his

anticipatory bail application came to be rejected.

9. The learned Prosecutor appearing for the State has placed on record the police report on 28th August, 2017 and submitted that there is no medical necessity to travel abroad. He further submitted that the Investigating Officer apprehends that the writ Petitioner if permitted to travel abroad shall abscond.

10. I have carefully considered the rival submissions and perused the material made available. By virtue of order dated 5th October, 2016 the only restriction on the writ petitioner for travelling out of Mumbai is to the effect that he has to give prior intimation to the concerned police station before travelling outside Mumbai. There is no restriction imposed on him by the Trial Court to the effect that he shall not travel abroad during pendency of the trial. The order directing deposit of passport with the Investigating Officer was an interim order in the anticipatory bail application which was ultimately rejected. The effect of this rejection is that the order dated 17th November, 2015 directing deposit of passport is merged in the final order, wherein no relief was granted to the writ petitioner. In other words, there is no restriction incorporated in any judicial order against the writ petitioner for travelling abroad and there is no judicial order directing him to surrender his passport. In the wake of this situation, the impugned order dated 21st August, 2017 passed by the Metropolitan Magistrate, 64th Court,

Esplanade, Mumbai cannot sustain judicial scrutiny. Because of rejection of his anticipatory bail application bearing No.1685 of 2015, the Investigator cannot hold passport of the writ petitioner for any further period.

11. Apprehension of the Investigator that if the writ petitioner goes out of India, he will abscond, can be taken care of by imposing appropriate conditions on the writ petitioner.

12. In this view of the matter, the following order :

ORDER

1. The impugned order dated 21st August, 2017 is quashed and set aside.
2. The Investigating Officer is directed to hand over the passport to the Petitioner.
3. The Writ Petitioner in terms of order dated 5th October, 2016 passed by the learned Metropolitan Magistrate shall give prior intimation to the Senior Police Inspector of the concerned Police Station/Investigating Officer of his tour outside India and he shall furnish his residential address at the foreign country which he intend to reside as well as cellphone number to the Investigator apart from furnishing his tour itinerary.
4. Rule is made absolute in terms of above order.

(A.M.BADAR J.)