

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3438 OF 2017

NAVINCHANDRA GANGADHAR HEGDE)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Shirish Gupte, Senior Advocate, i/b. Ms.Racheeta Dhuru a/w.
Ms.Supriya K., Advocate for the Petitioner.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 25th SEPTEMBER 2017

ORAL JUDGMENT :

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

2 Facts projecting from this petition vividly shows scant
disregard to the judicial orders by police authorities.

“ ORDER

1. The application is hereby allowed.
2. The applicant be released on his executing P.R.Bond of Rs.50,000/- with one solvent surety in the like amount.
3. The applicant shall not tamper the prosecution witnesses by inducement or threat.
4. The applicant shall appear before the I.O. as and when directed by him.”

4 The petitioner came to be arrested on 19th August 2017 at Chhatrapati Shivaji Maharaj International Airport, Sahara, Mumbai, when he was about to travel to some foreign country. He came to be produced before the learned Metropolitan Magistrate with remand application on 19th August 2017. He, then, preferred an application for bail which came to be opposed by the learned APP by stating that the applicant came to be arrested in pursuant to Red Corner notice issued against him during investigation. Unfortunately, the learned Metropolitan Magistrate, by the impugned order dated 19th August 2017 was pleased to reject the said application with a reason that the petitioner was attempting to travel abroad without prior permission of the Metropolitan Magistrate.

5 Heard the learned senior advocate appearing for the petitioner. By taking me through the progress of the matter after arrest of the petitioner, the learned senior counsel argued that once the superior court grants bail to the petitioner without

imposing any condition restricting his travel to foreign country, he ought not to have been arrested by the police authorities in pursuant to the Red Corner notice issued during the course of investigation of the said crime. The learned senior counsel further argued that unless and until the bail granted by the Additional Sessions Judge is cancelled by the same court, or some superior court, the petitioner cannot be kept behind bars.

6 The learned APP attempted to justify the action of arrest of the petitioner with a reason that Red Corner notice was issued by the Investigator.

7 I have carefully considered the rival submissions.

8 After his arrest in Crime No.177 of 2016, the petitioner was directed to be released on bail by the learned Additional Sessions Judge, Greater Bombay, Mumbai, vide his order dated 8th September 2016 passed in Bail Application No.1737 of 2016. It is seen from the said order that no condition prohibiting the

petitioner to travel abroad or to seek permission of the concerned court while travelling abroad was imposed by the learned Additional Sessions Judge while releasing the petitioner on bail, during the pendency of the trial. It is not pointed out, that the State at any point of time, had challenged this order, or prayed to get it modified from the same court by imposing additional conditions against the petitioner restricting his travel to foreign countries.

9 The Red Corner look out notice is not pertaining to some other crime but it is in respect of the very same crime bearing no.177 of 2016. Once the petitioner is arrested in the said crime, red corner notice issued at some prior stage cannot be made use to re-arrest the petitioner, despite the judicial order directing his released on bail. The police, infact, committed breach of order releasing the petitioner on bail by re-arresting him on the pretext of the alleged Red Corner notice issued during investigation.

10 Further illegality seems to have been committed by the learned Metropolitan Magistrate while passing the order dated 19th August 2017 rejecting bail application filed by the petitioner after his re-arrest in pursuant to so called Red Corner notice by the police. The learned Metropolitan Magistrate committed error of law in holding that the petitioner ought to have sought permission of the Metropolitan Magistrate prior to travelling abroad. No such fetters were imposed on his liberty by the superior court while releasing the petitioner on bail on 8th September 2016. In this view of the matter, the impugned order dated 19th August 2017 cannot be sustained. In the result, the following order :

ORDER

- i) The petition is allowed.
- ii) The impugned order dated 19th August 2017 passed by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, in Bail Application of the petitioner dated 18th August 2017 in Criminal Case No.596/PW/2016 is quashed and set aside.

- iii) The petitioner should be released forthwith as he is on bail in pursuant to order dated 8th September 2016 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Bail Application No.1737 of 2016.
- iv) Rule is made absolute in above terms and the petition is disposed of accordingly.

(A. M. BADAR, J.)