

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.229 of 2017

P.Rajagopal
S/o.Pitchai

... Petitioner/Accused

Vs.

State represented by
Inspector of Police,
J7, Velachery Police Station.
Crime No.1047 of 2001

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the order of learned IV Additional Sessions Judge, Chennai, passed in Crl.M.P.No.5501 of 2016 in Crl.M.P.No.2596 of 2011 in S.C.No.3 of 2003 on 03.11.2016.

For Petitioner : Mr.S.Ratnakaran

For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate [Crl.side]

O R D E R

This revision arises against the order of learned IV Additional Sessions Judge, Chennai, passed in Crl.M.P.No.5501 of 2016 in Crl.M.P.No.2596 of 2011 in S.C.No.3 of 2003 on 03.11.2016.

2. Petitioner has been convicted and sentenced to life imprisonment for offence u/s.302 IPC and fine of Rs.30,00,000/- u/s.109 IPC in case tried in S.C.No.3 of 2003 on the file of learned IV Additional Sessions Judge, Chennai. Petitioner and others preferred appeals in C.A.Nos.637 and 748 of 2004 before this Court, which came to be dismissed under judgments dated 19.03.2009. There against, petitioner and others preferred C.A.Nos.820, 821 and 824 of 2009 before the Supreme Court, wherein under orders in Crl.M.P.Nos.7314 and 7315 of 2009 dated 13.05.2009, petitioner was granted the relief of bail. Petitioner has moved Crl.M.P.No.2596 of 2011 in S.C.No.3 of 2003

seeking return of passport towards his going abroad for treatment for diabetes and cardiac disorders. Reliance was placed in the decision of the Apex Court in Suresh Nanda v. C.B.I. [2008 (5) CTC 277 (SC)] towards contending that passport could not have been impounded u/s.104 Cr.P.C. Court below under orders dated 09.03.2011, directed as follows:

'i) the passport shall be return to the petitioner after he filed the affidavit of undertaking and on execution of a bond for Rs.10,000/- with one surety for the like sum.

ii) the petitioner shall return the passport immediately after it has been renewed by the passport authority.

iii) the petitioner shall obtain permission from the court whenever he wants to go abroad for his treatment with documentary proof and if permitted by the court shall file the copy of the air ticket and the particulars of his stay at abroad.

iv) the petitioner shall return the passport immediately after returning to India.

8. With this condition the petition is allowed.'

Having returned the passport to the custody of the Court, petitioner moved further petition in Crl.M.P.No.5501 of 2016 in Crl.M.P.No.2596 of 2011 in S.C.No.3 of 2003, seeking permission to go to Germany for opthalmic treatment and for return of his passport. Court below, under orders dated 03.11.2016, dismissed such petition, giving rise to this revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

4. Though it has been contended before the Court below that retention of petitioner's passport was not justified, Court below took the view that the petitioner had already obtained permission from Court for return of passport and the same was allowed with conditions and as the petitioner did not file any appeal against such order, the question of considering the legality of retaining the passport in the records did not arise and the scope of the petition was limited to whether the petitioner had stated valid reasons for going abroad for treatment, despite the pendency of appeal before the Honourable Supreme Court. On perusal of the records produced before it, Court below informed that the same revealed that eye sight of the petitioner was satisfactory. Court below refused to take into consideration xerox copy of a certificate dated 30.06.2016 translated from German to English, which informed that petitioner's vision could be improved by surgery, on the reasoning that the authenticity of the document could not be verified and translation had not been effected in accordance with law. Court below found no proof of petitioner's losing his

eye sight owing to problems stated in the petition. The contention of petitioner that he had lost sight of the right eye completely after undergoing a surgery was found unsubstantiated. Lack of proof of non-availability of treatment in India as that sought by petitioner in Germany was also considered. Court below has informed that the petitioner had initially filed petition for return of passport during the year 2011 for taking treatment in Australia for his knee complications, remained silent for certain period and then filed petition to go to abroad for knee surgery which was dismissed in the year 2012. After 4 years, petitioner had come up with a petition informing need to go abroad for eye treatment without any solid proof. Petitioner did not furnish any details about the operation and total period of treatment abroad. Court below found petitioner to be attempting to go abroad informing one or the other reason. Considering that the appeal preferred by the petitioner is still pending before Honourable Supreme Court, Court below found reasonable the contention of the respondent that the Court should not consider the plea of petitioner to leave the territorial jurisdiction of Honourable Supreme Court. Further, the contention of respondent that it would be difficult to trace convicts and absconders who take refuge in foreign lands was found acceptable. On the above considerations, Court below has dismissed the petition. This Court finds no error in the order under challenge. This Court is also of the view that as the petitioner is on bail under orders of the Apex Court, it would be appropriate that he seeks relief therefrom.

The Criminal Revision Case shall stand dismissed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm

To

1.The IV Additional Sessions Judge,
Chennai.

WEB COPY

2.The Inspector of Police,
J7, Velachery Police Station.

+1cc to Mr.A. Prabhakaran, Advocate, S.R.No.11198

rk(CO)
md(05/03/2017)

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