

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1343 OF 2017

ORDER:

This Criminal Petition is filed under Section 439 (1) (b) of Cr.P.C. to relax the condition imposed by the IX Metropolitan Magistrate, Cyberabad, Kukatpally on 6-1-2017 in Cr1.M.P.No.65 of 2017 in C.C.No.137 of 2016 whereby the petitioner was directed to deposit passport before the Magistrate and address a letter to Immigration Authority informing about the involvement of the petitioner.

In the present petition, it is contended that petitioner is working at London and in case, the petitioner has to surrender passport before the Magistrate, it is difficult for him to go to London and thereby he will be deprived of his employment in London and therefore, the order passed by the Metropolitan Magistrate is sought to be modified relaxing the condition imposed by the learned Metropolitan Magistrate for surrender of passport.

Learned counsel for the petitioner during hearing, placed reliance on a judgment of Apex Court in (Appeal (Cr1.) 179 of 2008, dated 24.01.2008) *SURESH NANDA vs. C.B.I.*¹. Basing on the law declared in the said judgment, it is contended that the imposing such condition virtually depriving the accused from discharging his duties by an employee at London and such condition is virtually amounts to denial of bail and relaxing condition.

¹ 2008 (1) R.C.R. (Cr1.) 897

He also produced Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India to contend that the accused can be forced to appear before the Court as per Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India, whereas counsel for defacto complaint would contend that he appeared before the court and obtained the order, but he did not appear before the court and caused delay and thereby, it is difficult for the court to secure his presence. In such a case, condition can not be relaxed.

Undoubtedly, the petitioner is working at London and if he is directed to surrender before the Magistrate, he will deprive of his employment and it is difficult for him to discharge his duties at London undertaking journey from India to London and passport is necessary for undertaking journey and it amounts to detaining the petitioner within the country without discharging his duties in his employment. He relied on a judgment of apex court in *SURESH NANDA vs. C.B.I.* referred supra where the apex court relied on earlier judgment reported in *MANEKA GANDHI v. UNION OF INDIA AND ANOTHER*⁽²⁾ where the apex court held as follows:

“.....Now, it has been held by this Court in SATWANT SINGH’S CASE (supra) that ‘personal liberty’ within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports

² (1978) 1 SCC 248

Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in SATWANT SINGH SAWHNEY VS. D.RAMARATHNAM, ASST.PASS PORT OFFICER (1967) 3 SCR 525) case was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State law' (vide A.K.Gopalan's case). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure....."

There is no quarrel about law declared by the apex court but here, some peculiar circumstances are prevailing. The crime was registered on 7-11-2015 and Investigating agency could not secure his presence despite its efforts to secure his presence and ultimately, resorted to follow the procedure to issue look out notice. Only on receipt of look out notice, he appeared before the court and applied for bail before this court in Criminal Petition No.6771 of 2016 where this court directed him to surrender before the Court below on or before 30th June, 2016 and file an application seeking to recall warrants and look-out notice and on filing such application, the court below is directed to recall the warrants and look-out notice issued against the petitioner on the same day on condition of petitioner executing a personal bond for a sum of Rs.10,000/- with one surety for the likesum for his future appearance.

Thus, in view of the direction issued by this court in Crl.M.P.No.6771 of 2016, the Magistrate passed the impugned order under challenge where the Magistrate directed the petitioner to surrender his passport and addressed a letter to Immigration Authority informing about the involvement of the petitioner.

Issuing N.B.W. is only to secure his presence before the court and earlier granting bail and releasing the petitioner on bail is nothing but to secure the presence of the petitioner to face trial but the petitioner's conduct shows that he is not bothering about the pendency of the case before the court. However, in view of the judgment referred above, such direction issued by the court amounts to deprivation of liberty.

Taking into consideration of those circumstances, I deem it appropriate to direct the petitioner to appear before the court on first Monday of every month and report before the IX Metropolitan Magistrate, Cyberabad, Kukatpally for a period of six months subject to further orders.

With the above direction, this Criminal Petition is disposed of.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 28-2-2017.

Dvs.

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Dated 28-2-2017.

Dvs