

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

+ CRL.M.C. 2448/2017

ABDUL WASI HASSAN ZADA

....Petitioner

Through: Mr. Rajeev Kapoor, Advocate.

versus

WLCCB NR

....Respondent

Through: Mr. Ripu Daman Bhardwaj, Mr. T. P. Singh and Mr. Sahaj Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

03.07.2017

CRL.M.A. 10105/2017(exemption)

Exemption, allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 2448/2017

1. Notice.
2. Mr. Ripu Daman Bhardwaj accepts notice.
3. The present petition has been filed under Section 482 of the Code of Criminal Procedure to challenge the legality and correctness of the order dated 13.06.2017 of Sh. Rakesh Kumar Sharma, Addl. District & Sessions Judge, Tis Hazari Courts, whereby the application seeking permission to travel to Kabul (Home town of the Petitioner) for six weeks and the release of Passport was declined.

4. It is the case of the petitioner that he is a Foreign National of Afghanistan having a passport of Islamic Republic of Afghanistan. The petitioner arrived at T-3, IGI Airport, New Delhi on 20.02.2017 from Kabul wherein he was arrested by the Custom department for possession of article appearing to be an Organ Pipe Coral without declaring the same. The petitioner had applied for bail before the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi which was granted vide order dated 25.02.2017. Thereafter, the petitioner filed an application seeking permission to go abroad which was rejected vide order dated 25.05.2017. On receipt of information of death of his elder son in a bomb blast, the petitioner filed an application seeking permission to go abroad before the Add. District & Sessions Judge, Tis Hazari Court which was rejected vide order dated 13.06.2017. Adversely affected by aforesaid order, the petitioner filed the present petition.

5. Mr. Rajeev Kapoor, counsel for the petitioner contended that his entire family is living and running their business in Kabul; that he is an Afghan National and used to come to India for his health checkups; that he has lost his elder son in a bomb blast due to which his family is in deep sorrow; that the petitioner has not violated any provision of the Wildlife Protection Act as an Organic Pipe Coral is known as *Bajra* of the fishes and not a living specie as discussed in the case Writ Appeal No. 723/2004 titled as *State of Tamil Nadu vs Kaypee Chemical*; that there exists an Extradition Treaty between India and Republic of Afghanistan; that if he is allowed to go to Kabul his presence could be secured at the Indian Embassy in Afghanistan; that the Embassy of Afghanistan has also

given a “No Objection” for travelling to Afghanistan; that till date no charge sheet has been filed by the prosecution against the petitioner.

6. Contrarily, Mr. Ripu Daman Bhardwaj, counsel for the respondent submitted that the article recovered from the petitioner was an Organ Pipe Coral (*Tubipora musica*) which is listed in Schedule I Part IVA Wildlife Protection Act, 1972; that the Embassy can in no terms assure the presence of the petitioner in Afghanistan as it does not have any power of arrest or detention; that the Extradition treaty is applicable only when an individual runs away from law; that the treaty would not be applicable in the present case as the petitioner was a foreign national and not an Indian citizen.

7. I have heard both the counsel for the parties and have also perused the material available on record.

8. Perusal of the record shows that the petitioner is a native of Afghanistan and there is every possibility that he would abscond and fail to return to India in case he is permitted to go to his country at this stage and thus misuse his liberty. The investigation in the present case is still underway and complaint under Section 55 of the Wildlife Protection Act, 1972 is yet to be filed. Moreover, keeping in view the nature and gravity of the allegations, it is not a fit case where permission to go abroad should be granted.

9. Consequently, the petition stands dismissed.

SANGITA DHINGRA SEHGAL, J.

JULY 03, 2017gr//