

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5214 OF 2017**

Irfan Mohamed Ismail Molvi

..Petitioner

Vs.

Asst Commissioner of Custom & Ors

..Respondents

Mr. Ayaz Khan i/b Ms Z. Charania for the Petitioner

Mrs. Anuradha Mane APP for the Respondent No.1

Mrs. A. S. Pai Addl PP for the Respondent Nos.2 & 3

Mrs. S. D. Shinde APP for the Respondent No.4

**CORAM :R. M. SAVANT, &
PRAKASH D. NAIK,JJ**

DATE : 26th JUNE, 2018

P.C.

1 The above Writ Petition has been filed inter alia for the following
reliefs:

(a) Quash and set aside the order of the Respondent of cancellation of OCI (Overseas Citizen of India) visa card Number A1500467 in the name of the Petitioner.

(b) Issue an appropriate Writ, Order of Directions to the Respondents to issue an appropriate Indian VISA to the Petitioner.

(c) Quash the Notice No.14/N/2015 dated 21/09/2015 issued vide outward No.779/2015 issued by the Trial Court annexed at Exh-H.

(d) Quash the order dated 21-11-2017 passed by the Learned Trial Court annexed at Exh-K.

2 The said reliefs are sought in the context of the order dated 21-11-2017 passed by the Learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. The said order has its genesis in the Notice No.14/N/2015 dated 21-9-2015 issued by the Trial Court. By the said order the Petitioner's application for being permitted to be in the United Kingdom till availability of the Indian VISA issued by the Indian Embassy / Consulate and permit him to travel India within 7 days of getting the Indian VISA, came to be rejected by the Learned Metropolitan Magistrate. The rejection was principally on the ground that the Petitioner had breached the conditions on the basis of which he was granted the permission to travel to the United Kingdom. The said conditions were as imposed by the order dated 25-2-2015 passed by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. The said order dated 21-11-2017 also directed the forfeiture of the bank guarantee of Rs.3 lacs which was furnished by the Petitioner as guarantee for the compliance of the condition mentioned in the said order dated 25-2-2015. There is no dispute about the fact that the Petitioner is a British National and was having an Overseas Citizen of India (OCI) card. There is no dispute about the fact that as of date the Petitioner's OCI card has been revoked and thereby the VISA of the Petitioner to travel to India also stands revoked. The proceedings which we have referred to in the earlier part of this order are the proceedings which are pending against the Petitioner in the concerned court, as the Petitioner is an accused in a case under the Customs Act for allegedly

smuggling gold into the country.

3 Be that as it may, the Learned Counsel appearing on behalf of the Respondent Nos.2 and 3 i.e. the Ministry of Home Affairs, Government of India tenders for our perusal letter dated 21-6-2018 addressed by the Section Officer (F-II) to the Foreigner Regional Registration Officer, Mumbai. In the said letter it has been mentioned that the Petitioner's case has been considered and direction was issued that Indian X Misc VISA with single entry facility on merit basis subject to no local objection and other usual checks and conditions may be issued. Hence to facilitate the Petitioner's going to India and appearing before the concerned court wherein he is an accused, the authorities have considered the case and a decision has been taken to issue him a single entry VISA subject to conditions. In view thereof the grievance of the Petitioner that he is not in a position to travel to India on account of the absence of VISA would not survive. The Petitioner may pursue the matter as regards his VISA with the authorities who are expected to consider Petitioner's case and issue him the VISA as mentioned in the said letter dated 21-6-2018, expeditiously.

4 In so far as the grievance of the Petitioner as regards the forfeiture of the Bank Guarantee, in terms of the order dated 21-6-2017 is concerned though the Learned Counsel for the Petitioner sought to urge various contentions before us against the said forfeiture, we do not deem it

appropriate to consider the said contentions at this stage, as the Petitioner is still to appear before the Trial Court after his return to India. We are therefore of the view that in so far as the said aspect of the forfeiture of his bank guarantee is concerned, the Petitioner can file an appropriate application before the Trial Court containing therein as to why the forfeiture of his bank guarantee could not be done after presenting himself before the Trial Court. After the Petitioner presents himself before the Trial Court, if the Petitioner is desirous of traveling thereafter, the Petitioner would for the said purpose also have to file an application before the Trial Court and it is for the Trial Court to consider the said application and decide the same in accordance with law.

5 With the directions as aforesaid, the Writ Petition is disposed of.

6 The letter dated 21-6-2018 is taken on record and marked as “X” for identification.

[PRAKASH. D. NAIK, J]

[R.M.SAVANT, J]