

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.523 of 2018

Kakulammarri Kalyan Srinivasa Rao

... Petitioner

Vs.

The Central Bureau of Investigation
Bank Securities and Frauds Cell
rep.by Superintendent of Police
Bangalore, Karnataka.

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 04.04.2018 in Crl M.P.No.5153 of 2018 in M.P.No.5473 in Crime No.4 of 2016 on the file of the Principal District and Sessions Court at Chennai.

For Petitioner : Mr.N.Elumalai

For Respondent : Mr. K.Srinivasan, Spl.PP

ORDER

Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI.

2 The petitioner herein is an accused in Cr.No.4 of 2010 registered by the respondent. The Trial Court on 28.04.2016, granted anticipatory bail to the petitioner on condition that he should surrender his passport and should not leave the Country without prior permission of this Court and also to appear before the Investigating Officer until further orders. Later the Trial Court has permitted the petitioner to go abroad the passport was returned to him to facilitate to go abroad on condition that he shall return to India by 27.08.2016 and surrender the passport on 30.08.2016.

3 The petitioner had gone abroad and complied with the condition imposed by the Trial Court and had surrendered his passport on 30.08.2016. Thereafter, he has filed another petition to leave abroad, which was dismissed by the Trial Court on merits. In the Crl.O.P.No.5521 of 2017, petition challenging the dismissal, this Court has observed that the condition to surrender the petitioner's passport before the Trial Court is

illegal. Accordingly, the condition to surrender the passport was set aside. While observing so, this Court has also made clear that all other conditions imposed in the impugned order dated 05.11.2016 by the learned Sessions Judge shall remain unaltered.

4 On perusal of the order dated 05.11.2016 passed by the Trial Court in CrI.M.P.No.16123 of 2016 in CrI.M.P.No.5473 of 2016 in Cr.No.4 of 2016 in respect of the petition to relax the condition and permit him to go abroad to visit his first daughter settled in USA and to find out University for his younger daughter to pursue her further studies, the Trial Court after considering the plea to relax the condition and the documents produced by the petitioner has found that the petitioner's second daughter is pursuing BA and had written her 1st semester examination in October 2015. Therefore, recording the said reason, the Trial Court has dismissed the petition to relax the condition.

5 While considering the petition to set aside the above said order, this Court in CrI.O.P.No.5521 of 2017 has gone beyond the scope of the prayer holding the order passed by the Trial Court to surrender the passport is illegal. Pursuant to the order of this Court, the passport of the petitioner was returned to him.

6 As far as the second limb of the order by this Court in CrI.O.P.No.5521 of 2017 is concerned, this Court had made it clear that all other conditions imposed in the impugned order dated 05.11.2016 shall remain unaltered.

7 The petitioner herein had again approached the Trial Court seeking permission to leave abroad. In his application dated 20.03.2018 in CrI.M.P.No.5153 of 2018 seeking relaxation of the condition imposed in CrI.M.P.No.5473 of 2016 dated 28.04.2016, at paragraph 8, he has stated that,

"8.The petitioner herein states that since there is an order by the Hon'ble High Court that the petitioner should not leave the country without the prior permission of this Hon'ble Court, the petitioner is filing the present application before this Hon'ble Court seeking leave/permission from this Hon'ble Court to travel abroad for his business purpose and he is facing recovery proceedings filed by the bank before the Hon'ble Debt Recovery Tribunal at Chennai and in order to purchase peace with the bank and to settle the issue amicably with the bank, the petitioner has to travel abroad frequently to various countries such as Sri Lanka and USA and Singapore. Therefore, the petitioner prays before this Hon'ble Court to relax the

condition imposed in Crl.M.P.No.9210 of 2016 dated 27.07.2016. Since, the petitioner is facing a lookout circular issued by the respondent, the petitioner's movement to foreign countries is being curtailed which is in clear violation of the fundamental rights of the petitioner. Besides, it also infringes upon the petitioner's personal liberty to travel abroad."

8 The Trial Court after considering the petition and the statement of objection, filed by the prosecution had dismissed the petition. The reason stated in the impugned order for dismissing the petition is that, the petitioner/accused is involved in a fraud to the tune of Rs.76.21 crores. Hence, look out circular for his availability in India during investigation, if the petitioner travels to other Country, it will tamper the investigation and every chance and likelihood of fleeing away and evade the law.

9 When this matter came up for admission, the learned Special Public Prosecutor submitted that after obtaining the passport pursuant to the direction of this Court in Crl.O.P.No.5521 of 2017 dated 12.05.2017, the petitioner herein got back his passport and has travelled abroad without prior permission of the Trial Court which condition was not altered. Though, this Court in its order in Crl.O.P.No.5521 of 2017 has made clear that the other conditions shall remain unaltered, the petitioner herein left the country twice without permission of the trial Court.

10 To find out whether the contention of the learned Special Public Prosecutor is borne by record, the petitioner herein was asked to produce his passport. On 23.04.2018, the petitioner herein produced his passport. Perusal of his passport, revealed that the petitioner had travelled to Indonesia and London on 07.06.2017 and 08.08.2017 respectively.

11 Today, when the matter was taken up again for consideration, the learned counsel for the petitioner could not place before this Court any record to show whether he had travelled to Indonesia and London, after obtaining prior permission of the Trial Court or without permission.

12 Be that as it may, since the Trial Court after considering the material placed by the petitioner was not convinced with the genuineness of the request and the travel details found in the passport of the petitioner indicates that he has travelled abroad without leave of the Court despite such condition has been imposed while granting anticipatory bail, this Court is of the opinion that the petitioner is not entitled for the prayer sought in this petition to relax the condition.

Hence, the order of the Trial Court in this regard is sustainable. Accordingly, this Criminal Revision Petition is dismissed.

13 The passport surrendered by the petitioner herein shall be returned to him since, the order passed in CrI.O.P.No.5521 of 2017 has not been challenged by the respondent before the appropriate forum.

14 The learned counsel for the petitioner submit that herein after the petitioner will not go abroad without prior permission of the Trial Court and to ensure the same, he is ready to surrender his passport voluntarily and get it from the trial Court as and when required, on application with adequate reasons if the Trial Court is satisfied with the reason may consider the application of going abroad for limited period with condition. He will undertake to return the passport within the date fixed by the Trial Court, This Court is not inclined to pass any order of make any observation on the above said request. It is always open to the petitioner herein to approach the Trial Court to make his request and if any such request is made before the Trial Court, it is for the Trial Court to consider the same and pass appropriate orders on merits.

15 The Registry is directed to return the passport to the petitioner/counsel obtaining acknowledgment for the receipt of the same.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Principal District and Sessions Court,
Chennai.
- 2 The Superintendent of Police,
Central Bureau of Investigation
Bank Securities and Frauds Cell
Bangalore, Karnataka.

3 The Special Public Prosecutor for CBI,
High Court, Madras.

4 The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.N.ELUMALAI, Advocate, S.R.No. 31647

Cr1.R.C.No.523 of 2018

PPA (CO)
TR(15/05/2018)



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