

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.599 of 2018
and
Crl.M.P.No.6954 of 2018

V.Baskaran

... Petitioner

Vs.

The State rep.by
Inspector of Police,
SPE/Central Bureau of Investigation/
Anti Corruption Branch,
Chennai

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 20.03.2018 of trial Court in Crl.M.P.No.412 of 2018 in C.M.P.No.23 of 2018 in C.C.No.6 of 2004 on the file of Principal Special Judge of CBI cases, VIII Additional City Civil Court, Chennai and to return the passport to petitioner/accused.

For Petitioner : M/s. K.V.Dhanapalan

For Respondent : Mr. K. Srinivasan

Special Public Prosecutor for CBI

ORDER

The petitioner was found guilty of offence under Sections 120B r/w 420, 467, 471 IPC and 13(2) r/w 13(i)(d) of Prevention of Corruption Act by the Trial Court as well as the Appellate Court.

2 Aggrieved by the conviction, the petitioner herein has preferred a Special Leave Petition. The Hon'ble Supreme Court has granted leave and pending appeal order to enlarge the petitioner on bail upon surrendering and on such terms and conditions to be imposed by Trial Judge. Based on the order of the Apex Court passed on 15.12.2017, the petitioner herein has surrendered before the Trial Court and sought bail. The Trial Court vide its order dated 03.01.2018, on his surrender has enlarged the petitioner on bail on the following conditions:-

"(i) The petitioner/A-2 shall execute a bond for a sum of Rs.10,000/- with two solvent sureties each for a like sum to the satisfaction of this Court.

(ii) The petitioner shall surrender his passport.

(iii) The petitioner shall appear before this Court on the 1st working day of every month at 10.00 a.m., until further orders."

3 After securing bail on deposit of Rs.25 lakhs and surrendering his passport, the petitioner herein has filed an application before the Trial Court for modification of bail condition and for return of his passport to renew the same and also to travel abroad to arrange treatment for his ailing father.

4 The Trial Court after hearing the petition and the counter filed by the prosecution has permitted the petitioner to receive the passport for renewal purpose validity of which expired on 13.02.2018. However, the further request to relax the condition to report before the Court every first working day of the month and permission to travel abroad, was declined endorsing the view expressed by the learned Special Public Prosecutor that modification of the condition will make the petitioner to go abroad and he may not be available for due process of law.

5 Aggrieved by the above said order of the Trial Court, the petitioner herein has filed the present revision petition. The contention of the learned counsel appearing for the petitioner is that the Hon'ble Supreme Court in Suresh Nanda Versus C.B.I reported in CDJ (2008) SC 161 has specifically observed that the passport cannot be impounded. Section 10 of the Passports Act provides for variation, impounding and revocation of the passports and other documents. Therefore, invoking provisions of Cr.P.C. to impound the passport is beyond the scope of Section 102 and 104 of Cr.P.C., of law.

6 This Court has no second opinion on the above said contention raised by the learned counsel for the petitioner. As per Section 104 Cr.P.C., the Court may, if it thinks fit, impound any document or thing produced before it, but not passport. The facts in the present case is not impound of the passport, but surrender of passport in compliance of the bail conditions, the said condition is imposed on the petitioner who is found guilty by two Courts and enlarged on bail by virtue of Apex Court order. To ensure his presence to submit himself to the process of law. The Apex Court has left to the wisdom and discretion of the Trial Court to impose any condition while enlarging the petitioner on bail, Which will ensure the liberty of the petitioner as well as his presence to respond the

proceedings pending.

7 Considering the background of the petitioner and the nature of the offence committed by him, the Trial court has permitted the petitioner to renew his passport. At the same time, to ensure his presence and appearance for submit himself to the due process of law had declined to relax other conditions. It is also seen from the impugned order of the Trial court that the learned Judge has observed that the matter has been seized of by the Hon'ble Supreme Court, so pending appeal before the Hon'ble Supreme Court he is inclined to return the passport to the petitioner only for renewal purpose and the petitioner should resubmit the passport on or before 20.04.2018.

8 Considering the submission made by the learned counsel for the petitioner and the learned Special Public Prosecutor, this Court is of the view that the contention raised by the petitioner that his passport is impounded by the Trial Court is incorrect. The petitioner who sought for bail had accepted the conditions imposed by the Trial Court to surrender the passport on his own and cannot, now turn around to say the condition to surrender the passport is improper.

9 Yet another contention raised by the learned counsel for the petitioner that the apprehension of the prosecution that the petitioner if allowed to get back his passport, he may go abroad and stay there forever and may not available for the completion of the appeal is unsustainable, in the light of the judgment rendered by this Court in Arockia Jeyabalan versus The Regional Passport office.

10 In the case above cited, the facts are pending trial, the petitioner therein absconded and red corner lookout notice was issued. Therefore, writ petition was filed to quash the look out notice. In the above context, the learned Judge of this Court opined that in a matrimonial dispute coercive measures need not be adopted and even if the fugative stay abroad, there are other provisions in the law to secure the petitioner. In the said context, the learned Judge has also referred the provisions of the Passport Act and Suresh Nanda's case cited supra. This judgment is not of any support to the petitioner herein because he is not an under trial. He has been found guilty and suffer conviction by the Trial Court and the same has been confirmed by the Appellate Court.

11 The other judgment cited by the learned counsel for the petitioner is the case of Miss Marie Andre Leclerc versus State (Delhi Admn.) and others reported in AIR 1983 SC 1092. In this case, life convict was permitted to go abroad by the Hon'ble Supreme Court on humanitarian grounds for medical treatment. In

this case the petitioner wants to go abroad for treatment of his ailing father. Except mention this, the petitioner has not said anything about the nature of ailment, or the propose country, where he wants to treat his father or the tentative date of his proposed visit to abroad and date of his return to India. The Trial Court after considering the facts and law had rightly declined the petitioner to go abroad by using the passport and had directed him to surrender the passport immediately after renewal.

12 The learned counsel for the petitioner submitted that pursuant to the direction given by the Trial court, the petitioner has received the passport and had got it renewed. The petitioner is hereby directed to surrender the passport forthwith as directed by the Trial Court. This Court finds no merits in this revision petition. Hence, the petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Special Judge,
for CBI Cases,
VIII Additional City Civil Court,
Chennai.
2. Inspector of Police,
SPE/Central Bureau of Investigation/
Anti Corruption Branch,
Chennai
3. The Special Public Prosecutor for CBI cases,
High Court, Madras.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.K.V.Dhanapalan, Advocate, S.R.No.34620

Cr1.R.C.No.599 of 2018

cs/18/06/18