

THE HON'BLE SRI JUSTICE A. RAJASHSEKER REDDY

W.P.NO.20721 OF 2018

O R D E R

As per the averments made in the affidavit filed in support of the writ petition, petitioner claims to be a citizen of USA. His wife lodged complaint and based on which Cr.No.134 of 2015 was registered for the offence punishable under Section 498-A and the police, after investigation, filed charge sheet in C.C.No.467 of 2015 on the file of XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. During the process of investigation, the passport of the petitioner was seized by the police and deposited in the court. Seeking release of his passport, petitioner filed CrI.M.P.No.399 of 2018 in C.C.No.467 of 2015. By order dated 22.02.2018, the trial court dismiss the petition. Aggrieved by the same, petitioner filed revision in CrI.R.P.No.69 of 2018 on the file of I Additional Metropolitan Sessions Judge, at Hyderabad. By order dated 27.04.2018, the lower appellate court dismissed the revision. Hence the present writ petition.

Learned counsel appearing for the petitioner submits that the petitioner is a permanent resident of USA and is employed there. He came to India to drop his mother and because of the seizure of his passport, he is unable to go to USA and join duty. He states that there are no orders from the court for seizure of his passport, but the police have seized and deposited in court. He submits that the petitioner has been granted bail and as the trial will take considerable time, his passport may be directed to be released and that the petitioner undertakes to attend the court as and when required and to abide by any other condition to be imposed by the court. Learned counsel also relied on the judgment in

*GIAN SINGH v. STATE OF RAJASTHAN*¹, wherein in similar facts and circumstances, the Apex Court ordered for release of passport of the appellant therein, on executing a bond for a sum of Rs.3,00,000/- with two solvent sureties to the satisfaction of the court. Learned counsel sought to pass similar order.

On the other hand, learned Assistant Government Pleader for Home submits that both the courts below have categorically found that if the passport is released, it would be difficult for the prosecuting agency to secure his presence for the purpose of trial. He further stated that the trial court passed interlocutory orders and as per Section 397(2) of Cr.P.C., revision against interlocutory proceedings, is not maintainable. However, petitioner filed revision before the lower appellate court and the same was entertained and dismissed; now again he filed the present writ petition in the form of second revision and hence the same is not maintainable. Therefore, he sought to dismiss the revision.

Against the interlocutory orders, the Sessions Court entertained the revision, though not maintainable, and dismissed the same, and against the said order, present writ petition is filed. No doubt, second revision is also not maintainable, but the fact remains that the petitioner has no other alternate remedy against order passed by Magistrate refusing to release the passport and in view of above facts and circumstances, this court is of the view that writ petition can be entertained and relief granted as Apex Court granted similar relief in Gian Singh case (1 supra).

The petitioner is stated to be a citizen of USA and is working there. He was already granted bail by the trial court and it will take considerable time for trial to be completed and as on today, charge sheet is filed.

¹ LAWS (SC) 1999 5 101

Therefore, if he is restrained in India by seizing his passport, his job prospects will be jeopardized. Therefore, his request needs consideration. No doubt the apprehension of the respondents for securing his presence cannot be ruled out, but the learned counsel for the petitioner submits that the petitioner is willing to give undertaking to be present before the court as and when required and to abide by the terms to be imposed by the court.

The facts in the judgment of the Apex Court in Gian Singh's case (supra) disclose that the petitioner therein is a permanent citizen of U.K. and in the criminal proceedings launched under Section 498 of the Act, he approached the High Court of Rajasthan for quashing the FIR and his petition was dismissed. In the appeal, the Apex Court directed for release of passport on certain terms by holding:

"2. This is a peculiar case where the appellant has acquired British citizenship and has settled down in England. His son married an Indian girl but the marriage passed through rough weather and eventually fell through. According to the appellant a decree of divorce has been passed by a court in England. Now the appellant is facing a criminal prosecution launched by the father of the erstwhile daughter-in-law under Section 498 of the Indian Penal Code before a Magistrate's court in Rajasthan. He made an attempt to get the prosecution quashed but the High Court declined to do so. We are not disposed to disturb the said order of the High Court.

3. But something more has to be granted to the appellant or else he will be put to irreparable sufferings as his passport has now been kept by the ACJM, Rai Singh Nagar, Rajasthan. If his passport is not released to him he will be compelled to remain in India which unfortunately is not his present home, and continue to remain here until the final end of the criminal proceedings now launched. Nobody knows when the trial will commence and end. But the respondent's counsel expressed apprehension that if the appellant is allowed to go back to England or to leave India he might not make himself available for the trial. The situation is not therefore free from difficulty. On the one side the legal process has to reach its normal culmination and on the other side the agony of the appellant that he cannot go home is genuine. We think a solution has to be worked out in the interest of justice.

4. After hearing both sides we direct the ACJM, Rai Singh Nagar, Rajasthan to return the passport of the appellant on his executing a bond for a sum of Rs.3,00,000/- with two solvent sureties to the satisfaction of the said court.

5. To ensure his attendance in the court when trial begins, we may make a provision. We agree that it would be difficult for the appellant to be present on all posting dates in the trial court. Therefore, we permit him to appear through counsel except on days when his presence is imperatively needed. He must file an application before the trial court through counsel and seek dispensation of his personal presence and ensure that his counsel would be present on his

behalf on days except when his presence is dispensable. If he makes an application the trial court shall dispense with his physical presence in court.”

Having regard to the facts and circumstances of the case and the submissions of the learned counsel for the petitioner and in the light of above judgment of the Apex Court, I am inclined to entertain the writ petition under Article 226 of the Constitution of India and dispose of the same with the following direction:

“The XII Additional Chief Metropolitan Magistrate, Mahila Court, Hyderabad, on whose file, C.C.No.467 of 2015 is pending, shall release the passport of the petitioner bearing No.523254939, subject to the condition of his depositing an amount of Rs.5,00,000/- (Rupees five lakhs only) to the credit of the criminal case, as security for his appearance, and also giving an undertaking in the form an affidavit stating that he will remain present before the court as and when required by the court.

During the pendency of trial, the petitioner shall be permitted to be represented through his counsel, except on days when his presence is imperatively needed. He must file an application before the trial court through counsel and seek dispensation of his personal presence and ensure that his counsel would be present on his behalf on days except when his presence is indispensable. If the petitioner makes such an application, the trial court shall dispense with his physical presence in court.

The above deposited amount shall be kept in fixed deposit in a nationalized bank till judgment is pronounced in criminal case and, thereafter, the fixed deposit amount along with interest be released in favour of the petitioner.

It is made clear that if the petitioner fails to appear when his presence is indispensable, depending upon the facts and circumstances, it is open for the trial court to forfeit the deposited amount.”

Miscellaneous petitions, pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:28—06—2018
AVS

