

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6906 of 2018

ORDER:

The petitioner filed this petition under Section 439 Cr.P.C. seeking to relax the conditions imposed in the bail order dated 29.12.2017 in CrI.M.P.No.6949 of 2017 in CC.No.622 of 2018 on the file of learned XXV Metropolitan Magistrate, Cyberabad, Kukatpally, renumbered from old CC.No.440 of 2017 of XIX Metropolitan Magistrate, Kukatpally, so as to permit him to go to USA for his gainful employment there.

The averments in support of the prayer supra that by 2 respondents including his wife-defacto complainant of the above case originally covered by crime No.477 of 2015 of Chandanagar Police Station, registered for the offences punishable under Section 498-A IPC and later added Sections 420, 120-B and 365 IPC are that pursuant to the order of this Court in CrI.P.No.4297 of 2017 dated 10.10.2017 and further miscellaneous petition in extension of time therein of CrI.M.P.No.10720 of 2017 dated 19.12.2017, he came all the way from USA and surrendered before the learned Magistrate and later was released on bail referred supra with the conditions of executing self bond for Rs.20,000/- with two sureties of like sum each and not to leave the State of Telangana or the Country without prior permission of the Court and appear before the Magistrate Court on each and every date of hearing without fail and also to appear before the SHO, PS

Chandanagar, on every Saturday between 10.00 AM and 05.00 PM for a period of one month therefrom. Pursuant to the directions, he appeared for 5 Saturdays before the SHO and later filed petition for relaxing the said condition of appearance before the police in Crl.M.P.No.962 of 2018 and also filed petition to represent to special vakalat holder and another petition for removal of look out corner notice in Crl.M.P.Nos.963 & 964 of 2018. Besides C.C.No.440 of 2017, there is DVC.No.9 of 2017 that were transferred and renumbered DVC.No.9 of 2017 as DVC.No.28 of 2018 besides C.C.No.440 of 2017 as CC.No.622 of 2018 before the learned XXV Metropolitan Magistrate supra. The defacto complainant filed application in Crl.P.No.769 of 2018 for cancellation of the regular bail granted by the learned Magistrate in Crl.M.P.No.6949 of 2017 and the same was dismissed by this Court on 05.02.2018. The petitions for permission through special vakalat holder and the removing of look out corner notice ended in dismissal. The petitioner who works for his livelihood in USA and son of the petitioner and the defacto complainant, who is US citizen, is also residing and studying third grade. The petitioner came to India on 22.12.2017 and obtained bail referred supra on 29.12.2017 itself. As per the direction of the Supreme Court in SLP(Crl).No.1528 of 2018 dated 19.02.2018, the petitioner was permitted to withdraw the SLP against the order of this Court in not quashing the C.C. proceedings, and to file discharge petition before the learned Magistrate Court. He filed Crl.M.P.No.1107

of 2018 on 08.05.2018 and it is still pending for filing of counter of the defacto complainant by posted to 18.07.2018 and the petitioner is staying in India without salary away from his minor son. He was granted divorce from the defacto complainant and also permanent custody of the minor son by USA Court by judgment dated 02.06.2017. In a connected SLP(Crl).No.3286 of 2016 filed by uncles of the petitioner, the Apex Court passed order to allow the parties to have the disputes between them mediated upon amicably and directed the counsel for the petitioner to communicate the proposal of mediation to the petitioner herein and requesting him to bring the son to India from USA to enable the defacto complainant, mother of the child to meet and to take back again to USA and made clear of compliance with the above direction will not have the effect of change in the guardianship or custody of the son with a direction to the parties to appear before the Apex Court Mediation Centre on 16.05.2018. In view of the bail conditions of the learned Magistrate, the petitioner could not appear before the Mediation Centre, New Delhi, on that day and the condition was not relaxed by the learned Magistrate to go to the Mediation Centre as it was ultimately ended in dismissal on 20.06.2018 and on the next date fixed for mediation was on 03.07.2018 at New Delhi for which the petitioner could not attend. The petitioner filed divorce OP.No.2149 of 2015 on the ground of adultery committed by her in USA and exerted pressure on police, prosecution, passport authorities, External Affairs

Ministry officials at various levels to harass the petitioner and got his passport impounded to issue LoC notice by communicating to his employer and others to malign him even after contest of the case in USA for 16 months and presenting personally for 9 months by enjoying the interim maintenance and visitation rights granted to her by USA Court and from the life threat to the petitioner and his son and others with reference to the WhatsApp chat between the defacto complainant and alleged paramour, the USA Court passed No Contact order against her on 06.01.2017 that was reiterated in the final judgment dated 02.06.2017 while granting divorce and permanent custody of the child and because of those orders petitioner cannot move the child from USA Court jurisdiction to a non-Hague signatory country. The petitioner filed FCOP.No.742 of 2018 before the IV Additional District Judge-cum-Additional Family Court, LB Nagar, for enforcement of the foreign decree granted by USA Court supra where the defacto complainant has to appear as it is posted to 27.07.2018. The petitioner did not commit any offence being law abiding citizen with respect towards society and unless the conditions imposed in the bail order are relaxed to travel to USA as he is employed in USA and it effects the affection of the minor son. It is necessary to relax the conditions imposed of not to leave the State and the Country so as to continue his employment in USA.

The counter affidavit filed by the defacto complainant in opposing the petition saying the petitioner fled the country with the minor child Sriman on 17.12.2015 without information or consent of the defacto complainant over night and since then she had no opportunity to see the minor child despite running from pillar to post due to his adamance. It is only after look out notice and red corner notice issued to secure presence of the petitioner, the passport authorities as per the order of the Court impounded the passport and the Indian Embassy had upraised the petitioner and his employer the necessity to secure his presence in India from several criminal cases have been filed against him and it is therefrom he come down by retaining the minor son there within the extended time and later was enlarged on regular bail on 29.12.2017 by surrender. Where conditions imposed as every apprehension of flee away and difficult to secure once allowed to leave and his application for relaxation of the bail conditions thereby were rightly dismissed in Crl.M.P.No.964 of 2018 on 20.06.2018 by the learned Magistrate with observations that he surrendered having come down to India having order of the High Court and later released on bail with the conditions and his presence along with that of defacto complainant is in need for trial of the criminal case and if he is allowed to leave the Country he will not return and it will cause sufferance to the defacto complainant for difficult to secure his presence once again thereby he is not entitled to the relaxation of the condition to leave the country, leave apart in

Crl.M.P.No.6949 of 2017 there was undertaking of he will not leave the jurisdiction of the Court without prior permission and the child in safe custody. The Supreme Court in SLP.No.3286 of 2016 referred the defacto complainant and the petitioner to mediate at New Delhi and he is not complying with. Even the Supreme Court observed in the above said SLP case of he has to bring the child to India from USA to enable the defacto complainant, mother of the child, to meet the child that it will not affect the guardianship or custody of the minor. He neither subjected to mediation nor brought the child to India despite direction of the Apex Court which is utter disobedience of the orders of the Apex Court and thereby the conditions cannot be relaxed to leave the Country.

The Apex Court's order speaks that he may be required to bring the minor son from USA to India to enable the mother of the child to see the minor child and entitled to take back the son to USA and permitted to travel USA for that purpose and it will not change the guardianship and custody of the minor child with mother and the couple are directed to appear on 16.05.2018 at 11.00 AM before the Supreme Court Mediation Centre and the Mediator shall submit report to the Apex Court within eight weeks from that day along with mediation report to list the matter. It appears the matter is still pending with the Supreme Court.

What the petitioner in the conditions relaxation petition says because of the bail application order containing in the

condition of not to leave the Telangana State and the Country and the condition relaxation petition dismissed in toto on 20.06.2018, he could not so far attend the Mediation Centre of the Supreme Court at New Delhi and he also has to take care of the minor child in USA left with temporary caretaker.

Undisputedly CC.No.440 of 2017 renumbered as CC.No.622 of 2018 referred supra it is coming for hearing on charges. The hearing on charges is mainly of the accused and the Court. The defacto complainant cannot even bring any material other than the prosecution material covered by the C.C. that has to be considered as per the three Judge Bench expression of the Apex Court in **State of Orissa v. Debendra Nath Padhi**¹, though accused is entitled as per expression of the Apex Court in **Rukmini Narvekar v. Vijaya Satardekar and Others**².

The learned counsel for defacto complainant also submits that they are ready to co-operate before trial Court for hearing on charges forthwith and for trial on what charges to be framed if any to give evidence and for early disposal as per Section 309 Cr.P.C. It is needless to say any applications filed pending or to be filed under Section 205 Cr.P.C. or under Rule 37 of Criminal Rules of Practice to decide on own merits this order will not come in the way.

Thus, at this stage and from the above, permitting of the petitioner to leave the Country for few months and to come back

¹ AIR 2005 SC 359

² (2008) 14 SCC 1

to face the trial will not serve any purpose including on the ground of seeing the child. For that in view of the order of the Hon'ble Supreme Court he can make the arrangements to see that some body who is caretaker of the minor child in USA can bring the child to India and keep in his custody and guardianship if at all he wants as that also to serve the purpose of the mother of the child also can see the child from said observations of the Hon'ble Supreme Court.

Having regard to the above, the trial Court is directed by virtue of this order to hear the accused and pass appropriate orders (either entitled to discharge or any charge to be framed following the above expressions and for that but for to assist the Court by the learned Public Prosecutor and the defacto complainant if at all only from the prosecution material they are not entitled to bring any new material and for that matter even by accused but for any clear documentary evidence of unimpeachable accuracy and correctness if shown prima facie entitled to discharge therefrom as per the expressions of the Apex Court supra) within one week from the date of receipt of this order and then take up trial if at all any charges framed as per the spirit of Section 309 Cr.P.C. day to day by virtue of this order to complete the entire process of trial preferably within two (2) months and at any cost for disposal within three months from date of receipt of this order. If at all the trial is not completed by pronouncement of judgment within three (3) months from date of receipt of the order, the petitioner is

entitled to renew the request for relaxation of the condition of not to leave the country to consider by this Court.

As the Supreme Court directed the parties to attend the Mediation Centre prima facie, the condition of not to leave the Telangana State is relaxed to the extent to attend the Mediation Centre at New Delhi pursuant to the Apex Court's direction in the pending SLP(Crl).No.3286 of 2016 for further hearing based upon their presence and submission of the mediation report.

In the result, this Criminal Petition is partly allowed with the above observations.

Miscellaneous petitions, if any, shall stand closed.

Date: 03.08.2018
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Dr. B. SIVA SANKARA RAO, J

