

01.12.2021
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SB
Ct. No. 39

CRM 6367 of 2019
CRAN 1 of 2020
CRAN 2 of 2021

In the matter of : Dinesh Maheshwari

Mr. Sandipan Ganguly
Mr. Soubhik Mitter
Mr. Rakesh Dev
Ms. Aindrila De For the Petitioner

Mr. Kaushik De ... For UOI

This is an application praying for relaxation or modification or waiving of condition imposed while granting bail to the petitioner in connection with the case no. DRI/KZU/AS/ENQ-33(INT-09)/2018/3684 under Sections 104 and 135 of the Customs Act presently pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a former Director and CFO of the accused company. The case was started for purported evasion of customs duty of Rs.14.5 crores. After summons was issued, Rs. 69.99 lakhs and Rs. 1.5 crores were deposited with the Director of Revenue Intelligence. Thereafter, the present petitioner was arrested. In the course of the proceeding, the difference amount of Rs. 12.38 crores was also paid to the Director of Revenue Intelligence. Therefore, the entire amount of allegedly evaded sum was paid. Thereafter, a show-cause issued against the petitioner and other accused and an adjudication took place. The penalty imposed in the adjudication proceeding has also been paid. This would be evident from the order passed in

the adjudication proceeding itself. However, the petitioner has challenged the order of adjudication before the appropriate forum. The petitioner was granted bail by this Court on 23.07.2019 subject to the conditions, *inter alia*, that the petitioner shall meet the Investigating Officer once in two weeks and shall submit certain documents to the Investigating Officer and on condition that he shall handover his passport before the learned Magistrate who shall keep the passport until further orders. The petitioner shall also deposit a sum of Rs.12.38 crores, which he did. Subsequently, the petitioner sought relaxation of the condition of meeting the Investigating Officer and the same was allowed by an order dated 16.10.2020 passed by this Court in CRAN No. 1 of 2020. At present the petitioner intends to get back his passport for travelling abroad and for other purposes. Reliance is placed on a decision of the Hon'ble Apex Court in the case of **Suresh Nanda vs. Central Bureau of Investigation** reported in **(2008) 3 SCC 674** and it is submitted that only the passport authorities can impound the passport and a Court of law, while adjudicating a case, cannot do so. In fact holding on to the passport for an inordinately long time amounts to impounding of a passport. In the present case petitioner's passport is in the custody of the learned Trial Court for more than two years. It is also germane to mention that till date no complaint has been filed in this case.

Learned counsel appearing on behalf of the Union of India submits as follows. It is true that adjudication proceeding in respect of the present case has been concluded the amount of allegedly evaded customs duty has already been secured. The petitioner has already deposited a sum of Rs. 2.19 crores and

thereafter, another sum of Rs.12.38 crores pursuant to the order passed by this Court, before the grant of bail.

I have heard the submissions of the learned counsels for the parties and have perused the application.

In view of the decision of the Hon'ble Apex Court in Suresh Nanada (supra), it is apparent that impounding of a passport cannot be done by a Court under Section 104 of the Code. Holding on to a passport of another for an inordinately long time may amount to impounding.

Admittedly, the amount of the allegedly evaded customs duty has already been secured in the present case.

It is also significant to note that till date no complaint has been filed against the petitioner.

In view of the above, I direct the learned Magistrate to release the passport to the petitioner on an undertaking that in the event the petitioner intends to travel abroad, he shall intimate the details of the travel plan to the learned Trial Court as also to the Investigating Officer in advance, at least before fifteen days of such travel.

With these observations, the application being CRAN 2 of 2021 for relaxation of condition of bail is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)