

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 175 OF 2019.

1. Mr. Grigorii Fomenko,
Russian National,
S/o Mr. Vikolay,
age 32 years, H.No.108,
Street Omskaya, Russia.

2. Ms. Viktoriia Fomenko,
D/o Andrew,
Age 29 years,
H.No: 1/1,
Street Gvardeyskaya,
St. Pokrovskoe, Russia,
Both Russian National,
Presently Lodged at Colvale,
Judicial Lock up, Colvale,
Bardez – Goa.

... Petitioners.

Versus

1. State,
(As represented by Officer in Charge,
Anti Narcotic Cell,
Panaji).

2. The Public Prosecutor,
High Court Building,
Althino, Panaji, Goa.

... Respondents

Mr. Kamlakant Poulekar with Ms. D. Tulkar, Advocates for the Applicants.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

Coram : Prithviraj K. Chavan,J.

Dated : 29th July 2019.

ORAL JUDGMENT:

Rule, returnable forthwith.

2. Mr. S.R. Rivankar, Public Prosecutor waives service.
3. Heard finally with the consent of learned Counsel for the Petitioners and learned Counsel for the Respondents.
4. Challenge in this petition is to the second condition in the order of bail granted by the Addl. Sessions Judge, directing the applicants to produce valid visas and passports as condition precedent for grant of bail.
5. The applicants came to be arrested on 11.04.2019 by the respondents for having found in possession of 118 grams of Ganja and for growing cannabis plants vide First Information Report No. 37/2019 under Section

20(a), 20(b)(ii)(A) of the NDPS Act. The applicants were granted bail by the Addl. Sessions Judge on 29.04.2019 on furnishing a bond in the sum of Rs.50,000/- each with one surety in the like amount. The second condition imposed by the Addl. Sessions Judge reads thus:-

“2. The applicants are required to have a valid VISA and passport, failing which the bail granted to them will stand cancelled.”

6. The applicants have applied for modification of the said condition. However, the application also came to be rejected by an order dated 10.06.2019.

7. It is contended on behalf of the applicants that they possessed a valid passport and visa at the time of their arrest. The valid passports are in the custody of the respondents which came to be attached after their arrest. It is contended that despite grant of bail, the applicants are forced to remain behind the bars only because of the condition of the valid visa imposed by the impugned order.

8. It is also contended that after the order of bail, the applicants had applied for extension of their visas to the FRRO, Panaji however, there is no reply so far.

9. It is, thus, submitted that the condition of valid visa cannot be a legal condition for grant of bail, when the valid passports are in possession of the investigating officer.

10. The application is opposed on behalf of the State. It is submitted by Mr. Rivankar, learned Public Prosecutor that in view of the judgment of the Division Bench of this Court in *Suo Moto Writ Petition No. 1/2019* dated 27.02.2019, applicants cannot be enlarged on bail without there being a proper visa.

11. Para 26 to 29 of the said judgment reads thus:-

“26. According to us, in such cases, the State/Prosecution can also make applications before the Magistrate/Courts where such matters are pending to expedite the matters by clearly pointing out the circumstances of overstay and apprehension that the involvement in petty offences is perhaps to facilitate such overstay. The Magistrate/Courts before whom such cases are pending should, as observed in Christian Chidieere Chukwu (supra) must endeavour to dispose off such cases expeditiously otherwise it would amount to facilitating such foreign nationals to stay in India

even though they may not have proper travel documents or their visa period may have already expired. In short, this would virtually facilitate such foreign nationals from defeating the provisions of the Foreigners Act, 1946, rules and orders made thereunder. No doubt, this cannot be the approach when the foreign nationals are found to be involved in serious offences say under N.D.P.S. Act, cyber fraud, rape etc. We make it clear that this list is by no means exhaustive. Such matters will have to be considered on a case to case basis.

27. *Although, it may neither be possible nor advisable to issue any specific directions in the aforesaid regard, some observations, are certainly in order. Since, the State is itself conscious that some foreign nationals, at times, deliberately involve themselves in petty offences, only in order to facilitate their overstay in India or otherwise defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder, we can only say that the State/Prosecution, in such cases, must either seek expedition of such matters by filing appropriate application before the Magistrate or Courts where such matters are pending or even consider whether withdrawal from the prosecution is a better option. In either cases, however, all arrangements must be made to forthwith deport such foreign nationals who are found to have no proper travel*

documents or whose visa term had already expired, no sooner such matters are disposed off by the Magistrate or Courts.

28. The Magistrate and Courts must also take cognizance of the subterfuges employed by some foreign nationals to secure bail and thereafter delay the matters, only to facilitate their overstay or otherwise defeat the provisions of the Foreigners Act, 1946, rules or orders made thereunder. As noted earlier, it may neither be possible nor feasible to issue any specific directions in this regard since these matters will have to be essentially dealt with on a case to case basis by both, State/Prosecution as well as the Magistrate/Courts. All that we emphasize, is that both State /Prosecution as well as the Magistrate/Courts must be conscious of such issues and accordingly take necessary steps to see that the process of the Court is not abused to defeat the provisions of the Foreigners Act, 1946, rules and orders made thereunder.

29. Accordingly, we direct the State/Prosecution to specifically bring these aspects to the notice of the Magistrate/ Courts in pending matters involving the foreign nationals who have no valid travel documents or who have overstayed by the visa term, by, if necessary, filing specific applications and furnishing all details. We also direct the Magistrate/Courts to take cognizance of such aspects, particularly at the stage of

consideration of bail applications made by such foreign nationals.”

12. The aforesaid Suo Moto Writ Petition addresses the issue of overstay of foreign nationals in the Country and establishment of detention centers for said foreign nationals who are overstaying in the Country. It is evident from the judgment that directions have been issued to the State Government to constitute the detention centers as expeditiously as possible. It is inter alia directed that the Detention Centre should comply with the guidelines set out in “Model Detention Centre/Holding Centre/Camp Manual” circulated by the Government of India, Ministry of Home Affairs (Foreigners Division) by communication dated 31.01.2019.

13. It is further directed to take emergent steps in order to deport the foreign nationals in Goa who do not have proper valid documents or which expired or such like reasons where there are no legal impediments for taking such steps. The judgment further directs that pending matters involving foreign nationals who have no proper/valid travel documents or whose visa terms have expired or for like reasons, State/Prosecution must file proper application before the Magistrate/Courts to bring this aspect to the notice of the concerned Magistrate/Courts where such matters are pending.

14. The direction further indicates that the Magistrate/Courts where the

matters involving foreign nationals who have no proper/valid travel documents or whose visa terms have expired or other like reasons, must take cognizance of such aspect and thereafter make appropriate orders in accordance with law so that legal process is not used as an instrument to facilitate overstay or otherwise violate the provisions of Foreigners Act, 1946.

15. In the light of the aforesaid guidelines, the second condition requiring valid visa of the applicants for their release on bail needs to be deleted as imposing the said condition would tantamount to refusal of bail.

16. Since the applicants have already applied for extension of their visas, the appropriate authority shall consider the same and pass necessary orders as per law.

17. Suffice it to state, that, the condition of requirement of valid visa stands quashed and set aside. Rest of the order as regards bail shall be maintained.

18. The learned Counsel for the applicants submits that in order to overcome the apprehension of the prosecution that there is a likelihood of the applicants fleeing away from justice, the applicants are ready to mark their attendance with the Crime Branch, Ribandar, once in a week

preferably on every Monday till filing of the chargesheet. The statement is accepted.

19. Rule is made absolute in the aforesaid terms.

20. Sheristedar shall furnish authenticated copy of the order to the parties.

PRITHVIRAJ K. CHAVAN, J.