

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 191 OF 2019

Union of India, through the
Superintendent of Customs

...Applicant

Versus

Mr.Yoguy Rafidison & Anr.

...Respondents

**WITH
CRIMINAL APPLICATION NO. 192 OF 2019**

Union of India, through the
Superintendent of Customs

...Applicant

Versus

Rajeev Santilal & Anr.

...Respondents

Mrs.Anuradha Mane for the Applicant in both the Criminal Applications.
Mr.Sagar Kasar a/w. Mr.Amog Wagh for Respondent No.1 in both the Criminal Applications.
Mr. N.B.Patil, APP for Respondent No.2-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 14 MARCH 2019**

P.C.:

1. The learned counsel for the applicant while opposing the order dated 12.12.2018 passed by the learned Addl. Chief Metropolitan Magistrate, 37th Court, I/c.8Th Court, Esplanade, Mumbai and the order 28.01.2019 passed

by the learned Additional Sessions Judge, City Civil & Sessions Court, Gr. Mumbai, has submitted that both the Courts have passed erroneous orders of allowing the applicants/accused to go to Madagascar i.e. their native place for a period of two months from 15.12.2018 to 15.02.2019. She has produced a letter dated 12.03.2019 written by the Assistant Commissioner of Customs, C.S.I. Airport, Mumbai to the learned Special Public Prosecutor wherein it was mentioned that the accused persons are facing adjudication proceedings and show cause notice is issued on 12.11.2018, and the period of adjudication proceedings is given as one year. She has submitted that these accused were found with 63 gold bars and 7 kg of gold, which approximately comes to Rs. 2,11,00,000/-. She has further submitted that if the accused are given permission to travel Madagascar, they will not come back and will not be available for prosecution.

2. The learned counsel for respondent No.1/ accused has submitted that both the accused were arrested on 31.05.2018 and granted bail on 25.06.2018. Since then, they are in India. They are citizens of Madagascar. He has further submitted that both the accused have attended the adjudication proceedings and co-operated the customs authority in the

said proceeding. He has further submitted that both the accused want to go back to their country to meet their families and also their business is standstill. He has further submitted that both the accused assure that they will return to India and will face the prosecution.

3. The learned Addl. Chief Metropolitan Magistrate has allowed their applications seeking permission to travel Madagascar for a period of two months from 15.12.2018 to 15.02.2019, but the said period is already over.

4. After considering the submissions of the learned counsel of both the sides and considering the facts and the nature of offence, I am inclined to uphold the order passed by the learned Addl. Chief Metropolitan Magistrate giving them permission to go to Madagascar for a period of two months. However, this Court takes note of the record and the submissions of the learned counsel for the applicant that both the accused are indulged into smuggling activities for a considerable period. Hence, I pass the following order by modifying the order dated 12.12.2018 passed by the learned Addl. Chief Metropolitan Magistrate, 37th Court, I/c. 8th Court, Esplanade, Mumbai :

ORDER

(i) Both the Criminal Applications are rejected on the point of setting aside the order dated 12.12.2018 passed by the learned Addl. Chief Metropolitan Magistrate in respect of allowing respondent No.1/accused to travel abroad for a period of two months. However, both the Criminal Applications are allowed by adding more conditions so that the presence of respondent No.1/accused can be secured;

(ii) Respondent No.1/accused are permitted to go to Madagascar for a period of two months from 01.04.2019 to 31.05.2019;

(iii) Respondent No.1/accused without fail shall attend the Office of the Customs for adjudication proceedings whenever they called and co-operate the Customs Authority till 30.03.2019;

(iv) It is submitted that both the accused have already deposited Rs. 4,00,000/- each;

(v) Respondent No.1./accused shall furnish cash surety of Rs. 11,00,000/- each for a period of two months. If at all, they have already deposited Rs. 4,00,000/- each before the learned Addl. Chief Metropolitan Magistrate, then they can make good total amount by depositing Rs.11,00,000/- each by depositing further Rs. 7,00,000/- each;

(vi) Clause Nos. 4 to 10 of the order dated 12.12.2018 passed by the learned Addl. Chief Metropolitan Magistrate remained same;

5. It is to be noted that if both the accused do not return for prosecution, the learned Addl. Chief Metropolitan Magistrate shall take necessary steps by invoking the provisions under the Code of Criminal Procedure to secure their presence.

6. Both the Criminal Applications are disposed of on above terms.

(MRIDULA BHATKAR, J.)