

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

WRIT PETITION No. 988 OF 2019

Capt. Mohammed Fajar

...Petitioner

Versus

State of Maharashtra

...Respondent

Mr.Aabad Ponda a/w Mr.Daljeet Bhatia, Pabiba Dutta and Mr.Mayank Sunil
i/b. Bose and Mitra & Co. for the Petitioner.

Mr.A.R.Patil, APP for the Respondent-State.

Mr. S.G.Awale, PI (IO) present in Court.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 26 FEBRUARY 2019

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission, as short issue is involved.

2. In this Petition, the order dated 21.02.2019 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai, below exhibit 28 in C.C. No. 68/PW/2017 is challenged.

3. The petitioner/accused is a foreign national from Indonesia. He moved an application for seeking permission to travel to Indonesia, as his son is getting married on 01.03.2019. The petitioner/accused is facing charges under sections 6 and 6 (1) (A) of Indian Wireless Telegraphy Act, 1933 (for short "IWTA") and also under sections 20 and 21 of the Indian Telegraph Act (for short "ITA"). The learned Magistrate has rejected the said application on 21.02.2019. Hence, this Petition.

4. The learned counsel for the petitioner/accused submits that the petitioner/accused has used the satellite connection with the help of a Thuraya device when he reached the Indian territory on 13.05.2017. He was arrested on 29.05.2017, as the Government of India had issued a notification in respect of not using the satellite and as per the Indian law, it is an offence. He further submits that the petitioner/accused has sent messages to his shipping company Svitzer Forti about his arrival on Indian territory. He further submits that the petitioner/accused has not sent objectionable e-mails. However, use of satellite is prohibited and, therefore, the petitioner/accused is prosecuted under IWTA and ITA. He further submits that these offences are bailable and he was released on bail on the same day. He further submits that the learned Magistrate while

granting bail on 29.05.2017, directed the petitioner/accused to handover the passport as well as seaman book to the police. He further submits that it is necessary for the petitioner/accused to attend the wedding of his son at Indonesia and after wedding ceremony, he will come back on 25.03.2019. He further submits that the petitioner/accused is ready to give security.

5. The learned APP while opposing this Petition, has pointed out that the trial has started in the Magistrate's Court and till today, two witnesses are examined and still 15 to 17 witnesses are required to be examined. He submits that the trial will be over within three months.

6. Considered submissions. The main apprehension of the learned Magistrate of rejecting the application filed by the petitioner/accused for giving permission to attend the marriage of his son at Indonesia is that he will not come back to India for trial because he is a foreign national. The offences are bailable. The petitioner/accused is on bail and staying in India since May, 2017. It appears that he is attended the trial and court dates. The photocopy of the wedding card is produced. On perusal of the wedding card, it is found that the groom Bayu is a son of Mohammed

Fajar, who is the present petitioner/accused.

7. It is made clear that in the absence of the petitioner/accused, the trial Court to proceed with the matter unless the evidence on the point of identification is required to be recorded.

8. Considering the nature of the offences and the facts of the case, I allow this Petition with following order :

ORDER

(i) The petitioner/accused is allowed to travel to Indonesia from 27.02.2019 till 25.03.2019, on a condition to deposit Rs. 2 lacs towards security in the Court of the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai;

(ii) The Investigating Officer/ trial Court to return the passport forthwith upon furnishing cash of Rs. 2 lacs towards security as mentioned above;

(iii) The petitioner/accused is directed to furnish his permanent address at Indonesia and also itinerary to the Investigating Officer;

(iv) The petitioner/accused shall report to the trial Court on or before 27.03.2019 and shall handover the passport to the Investigating Officer on the same day.

(v) Rule is made absolute on above terms.

9. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)