

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

CRIMINAL APPLICATION NO.245 OF 2019

IN

WRIT PETITION NO.2330 OF 2012

Aneesha Dutt

.....Applicant/
Org.Petitioner

versus

Union of India and ors.

.....Respondents

with

CRIMINAL APPLICATION NO.296 OF 2019

IN

WRIT PETITION NO.2330 OF 2012

Ashu Dutt

.....Applicant/
Org.Respondent No.6

In the matter of

Aneesha Dutt

....Petitioner

versus

Union of India and ors.

.....Respondents

Ms. Deepa Chavan along with Mr. Vikrant Yadav, Ms. Reshmaram Mathani, Mr. Mahir Bhatt and Ms.Ruchi Patil I/b. Mr. Wasim Ansari, advocate for the applicant in criminal application No.245 of 2019 and petitioner in writ petition No.2330 of 2012.

Mr. Rohan J. Cama along with Mr. Shanay Shah I/b. Yusuf S. Mithi, advocate for the applicant in criminal application No.296 of 2019 and respondent No.6 in writ petition No.2330 of 2012.

Mr. K. V. Saste, APP for the State.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 12th JUNE, 2019.

P. C. :

1. The present applications filed before us are the ones amongst

several cases fighting battle for custody of the children on account of estranged relationship between the husband and wife. A petition seeking custody of the three children viz. Anav, Arshiya and Ahren came to be instituted in this Court in the year 2012 by wife – Aneesha alleging that the husband has whisked away the children and the petition was in the nature of habeas corpus. After hearing, the petition came to be disposed off after an attempt was made, to work out settlement between the parties and the Division Bench of this Court on 22nd August, 2012 helplessly observed that settlement is not possible between the parties. However, in order to permit the children to accompany their mother, since the children were minor at the relevant time and were enjoying dual citizenship of Thailand and USA, the Court imposed stringent condition that the passports of the children and Overseas Citizen of India Card (O.C.I.cards) of all the three children be deposited in the Registry of this Court and whenever the occasion arises, it would be put to use. The said order came to be modified by passing further order on 29th August, 2012 wherein a stipulation was introduced in the initial order that the children will not be taken out of the Country by any party without notice or written permission of the other party. The writ petition was disposed off with an expectation that the custody petition would be disposed off by the concerned competent Court expeditiously.

Seven years down the lane, battle revolving around the travel of the children, is still being fought by the parents in the Court of Law. However, in several rounds of litigation, the parties have landed before this Court and the Hon'ble Apex Court on the pretext of taking the respective children out of the Country either accompanied by parents or exclusively on their own. During the pendency of the petition, the most important development that occurred was that the elder son who was a minor at that time has attained majority in the year 2018. The daughter has now become 15 year old and another child viz. Ahren is 11 year old.

2. The present criminal application No.245 of 2019 is taken out by the mother seeking permission to take her 11 year old son – Ahren out of the country to visit her ailing father, who is stationed in Thailand. We are conscious of the fact that prior to this occasion, on six occasions, such applications were dealt by this Court and amongst these, on five occasions, the child was allowed to travel, except on one occasion, where he was allowed to travel along with the officer of the Court. Thus, on six occasions, Ahren was permitted to travel abroad. We have also noted the orders, where daughter- Arshiya was also allowed to travel and since the elder son has now attained majority, he continues to stay and pursue his education in the United States.

The present application which seeks permission for travel of the son - Ahren is accompanied by travel plan and we have noted that the date of travel has already expired. However, Ms.Chavan, learned counsel makes a solemn statement before the Court that necessary permission would be taken from school authorities so as to extend the travel of the son beyond the period that is prayed for in the application and which could extend beyond 16th June, 2019 by another period of three weeks. The said application is opposed by Mr.Cama, learned counsel representing the husband, on the ground that there are two subsequent developments which are to be taken note of, and though on earlier occasion, such a permission was granted, these two developments would change the entire gamut of the matter and one factor on which he strenuously rely upon is a petition which is instituted by the wife along with the minor son in the Supreme Court of India under Article 32. He has invited our attention to the relief sought in the prayer which according to him is clear of the intention of the respondent to settle abroad along with the said child and for that purpose the permission is sought. The second factor, on which, Mr. Cama insists is an affidavit dated 12th August, 2015, submitted by Aneesha in Special Leave Petition (C) No. 19529 before the Apex Court, in which, she made a following statement :

"12. I, the petitioner (from 3rd December 2003

and after me not being shown as a director in the Form 32 filed by the Respondent on 21st January 2013 and was subsequently corrected to set record of the ROC straight on 29th January 2013) and my brother (appointed on 22nd September 2012) continue as directors of the 3 companies till date.”

He also makes a reference to the contents of certain affidavit filed by the wife in the Guardian Petition. On these grounds, the travel of the petitioner along with the son - Ahren is opposed by Shri Cama and he submits that if at all, it is to be permitted, it would be subject to stringent conditions in addition to the the one which were imposed by the Apex Court.

3. While we were in amidst of hearing of this petition, another application No.296 of 2019 is filed by the husband – Ashu Dutt, wherein a relief is sought to the effect that the daughter-Arshiya may be permitted to travel abroad for a period of 3 months for the period between 15th June, 2019 to 13th August, 2019.

4. We tried to intervene and effect settlement between the parties so that the petitioner could have consented for travel of the daughter abroad, whereas the respondent could have consented for travel of his son along with his mother in view of the illness of the

grandfather. However, unfortunately the parties are not able to arrive at any amicable settlement or consent terms, so as to enable us to pass an order on consensus. Resultantly, we have perused the earlier orders permitting travel of the children, passed by the Hon'ble Apex Court and this Court and the Family Court and proceed to pass orders on merits.

We have taken note of the order dated 25th August, 2015 which is the first order passed by the Hon'ble Apex Court and which still continues to govern the field, since the said order was passed on an application filed by the petitioner-mother who had sought permission to take her son abroad. The Apex Court after perusing the report of the Registrar of Companies has observed that the immovable properties mentioned by the applicant are owned by the companies, in which, the appellant – Aneesha has certain shareholdings. The percentage of such shareholdings is disputed question of fact, however, it deemed that it is sufficient security, apart from the fact, that other two children of the appellant are in India. By the same order, a condition was imposed that if the mother do not return with the child in terms of the undertaking, the extent of her shareholdings in the companies mentioned in the report of the Registrar of Companies shall stand forfeited. This order passed by the Apex Court was subsequently relied upon on three occasions, in the order passed by Justice R.G. Ketkar, the subsequent

order passed by Justice Girish Kulkarni, wherein the observations made by the Supreme Court formed the basis for granting permission to travel abroad. Another order to which a reference has been made is an order passed by Justice Sonak on 10th December, 2018. We have perused the said order. The said order is based on consensus between the parties wherein Ahren was permitted to travel to Thailand between 21st December, 2018 and 6th January, 2019. We are surprised that the parties have arrived at consensus when this order came to be passed, which is subsequent to the filing of the petition under Article 32 by the applicant. In any contingency, we are of the opinion that the order passed by the Apex Court on 25th August, 2015 still continues to govern the field and we have carefully perused the affidavit filed by the applicant and we do not see any deviation or an attempt which would dilute the observations in said order. Nonetheless, the terms and conditions expressed by the Apex Court justify the applicant to travel along with her son. At the same time, the application which is filed by Mr. Cama, in form of application No.296 of 2019 seeking the daughter's travel abroad for a limited purpose is also strongly opposed by the applicant and on the same apprehension that if the daughter goes abroad and since she is likely to attain majority in short while, the chances of she returning back to the Country are remote.

5. In these aforesaid circumstances, by taking into consideration the apprehension expressed by both the parties that the children may not return back, we deem it expedient to impose certain conditions to ensure their return back. While passing the said order, we are guided by the earlier several orders which have not put any fetters on the travel of the children abroad, since we have seen that the applicant-mother is a Thai Citizen and not only that, the respondent – father was also a US Citizen till 2010 and both the parents have encouraged their children to travel abroad whenever necessary and required. In these circumstances, we are of the opinion that the freedom and liberty of the children need not be constricted on account of the discord between the parties and their respective apprehensions. However, apprehensions which are expressed by both the parties must also be put to rest and duly taken care of. In such circumstances, in continuation of earlier orders passed by the Apex Court as well as this Court, we permit the applicant – Aneesha Dutt (in criminal application No.245 of 2019) to travel to Thailand along with her son Ahren for a period of 3 weeks commencing from 19th June, 2019. We permit the said travel of the applicant subject to the following terms and conditions :

1. Ahren shall be permitted to travel to Thailand for a period between 20th June, 2019 to 14th July, 2019.

2. The applicant is directed to seek necessary permission from the school authorities absolving attendance of Ahren during the aforesaid period.

3. The applicant – Aneesha Dutt to submit undertaking in this Court within a period of three days from today that she along with her son – Ahren would return to India on or before 14th July, 2019. She would also submit an undertaking that in case she fails to return along with her son, she would forfeit her interest in the shares of the Company which she is holding and as indicated in the report of the Registrar of Companies and that she will also forfeit her residential flat located at F-1, Beach House, Gandhigram Road, Juhu, Mumbai. She would also undertake that in case on failure to abide by the undertakings stated above in form of an affidavit tendered to this Court within 3 days, she would be liable for initiation of an action for disobedience of the order of this Court and then, the breach of undertaking would be treated as contempt of Court.

6. As far as criminal application No.296 of 2019 is concerned, Miss Chavan submits that the her client has no objection for the daughter travelling abroad, however, she would urge that the travel would be subject to the same stringent conditions as has been imposed upon her client to accompany her son to travel to Thailand. However, Mr. Cama stated that the father does not intend to travel abroad and

accompany the daughter and the daughter intends to travel all alone. Mr. Cama has submitted that his client is ready to deposit his passport in the Registry and it is only on return of the child and on deposit of the passport of the child -Arshiya, that his passport should be released. We are of the view that the said undertaking in form of surrendering the passport is a sufficient security for the daughter to travel abroad and to ensure her return within the period stipulated.

7. In these circumstances, we direct the Registry to release the passport and O.C.I. Card of Arshiya, so that she can travel abroad subject to the applicant -father tendering an undertaking to the following effect within a period of three days from today, where he would undertake that his daughter Arshiya would return to India in terms of the travel plan and on her return, he will deposit her passport with the Registry. Since Mr. Cama submitted that the dates of travel of Arshiya are not yet finalized and she is likely to travel any time between 15th June, 2019 to 31st August, 2019 and he undertakes to tender a travel plan of Arshiya as soon as dates of travel are finalized in this Court in sealed envelope, in such circumstances. We direct the applicant-father to deposit his passport with the Registry of this Court within three days prior to the scheduled departure of daughter- Arshiya. It is directed that the said passport will be returned only after 31st August, 2019 in the

contingency when the daughter-Arshiya returns back and her passport as well as O.C.I. Card are deposited with the Registry.

In the undertaking/affidavit filed before this Court the applicant-father should also state that any non-compliance of the undertaking submitted before this Court would warrant into serious action entailing the consequences of initiation of contempt proceedings against the applicant.

8. In light of above directions, both the criminal applications stand disposed off.

9. So far as the issue of rationalization is concerned, the parties are at liberty to approach this Court claiming rationalization of access in terms of earlier orders and all rights and contentions of the respective parties in this regard are kept open.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]