IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3287 OF 2019

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Abubakar Ahmad Said Saleh ...Petitioner
Versus
The Union of India & Anr. ...Respondents

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Mr. A.R. Shaikh a/w. Mrs. Nasreen Ayubi i/b. Mrs. Aisha Ansari for Petitioner.
Mrs. Anuradha Mane, Special Public Prosecutor for Respondent No. 1.
Mrs. M.M. Deshmukh, APP for Respondent-State.

CORAM : S. S. SHINDE, J
DATE : 20th August 2019

P.C.

1. This writ petition is filed with the following prayer:-

(a) This Hon'ble Court be pleased to set aside and quash the impugned order dated 10.06.2019, passed by the Learned Sessions Judge, City Civil and Sessions Court Greater Bombay.

2. Learned counsel appearing for the Petitioner submits that, the Petitioner filed an application seeking permission to travel abroad i.e. Dubai and South Africa for the period of six months from 24th April 2019 for attending his wife and children. It is submitted that, nobody is with his wife and children to look after them. His children got admission in school in South Africa and his business is also in the said country. Previously, he was granted permission on six occasions to go abroad and he abided by the conditions imposed on him and returned back on due date after journey.

3. It is submitted that, after order dated 25.03.2015 passed by the Trial Court, the Petitioner was permitted to travel abroad for six times. After order-in-appeal dated 28.02.2019, on 18.04.2019, the Petitioner was permitted to go abroad. The Petitioner has complied with the conditions imposed on him by various orders passed by the Learned Trial Judge. The Petitioner has not misused the liberty given to him and he has not indulged in any illegal or prejudicial activities. The Learned Sessions Judge has not appreciated the facts and documents placed before him by the Petitioner in right perspective. The learned Sessions Judge has arbitrarily modified the condition imposed on the Petitioner in order dated 18.04.2019.

4. Therefore, learned counsel appearing for the Petitioner submits that, the Sessions Court, Mumbai has imposed onerous conditions thereby directing the Petitioner to deposit Rs. 19,00,000/- in addition to amount of Rs. 6,50,000/-, which was already deposited.

5. The Petitioner has also filed the affidavit and stated that, he wants to travel abroad from 16th August 2019 to 15th February 2020. He has also stated an amount deposited by him earlier in the said affidavit.

6. Pursuant to the direction given by this Court by order dated 9th August 2019, the Petitioner has deposited Rs. 15,00,000/- in the Registry of

learned Chief Metropolitan Magistrate and to that effect, copies of receipts of such deposit are placed on record.

7. On the other hand, learned counsel appearing for the Respondent submits that, the Petitioner was indulged in very serious illegal activity and he is trying to avoid the trial. It is submitted that, the penalty of Rs. 25,00,000/- has been imposed on the Petitioner and therefore, learned Sessions Court, Mumbai has directed the Petitioner to deposit Rs. 19,00,000/- in addition to the amount already deposited. There is no case made out for causing interference in the order passed by the Sessions Court by invoking writ jurisdiction.

8. It appears that, Additional Sessions Judge City Civil & Sessions Court, Greater Bombay allowed the revision filed by the Petitioner. The operative part of the said order reads thus:-

> *1. The revision is partly allowed.*
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> *2. The Condition relating to additional security deposit of Rs. 50,000/-- imposed vide Order Para No. (ii) of Impugned order dated 18.04.2019 passed by Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in Misc. Application No. 822/M/2019 in Criminal Case No. 171/SW/2014 is modified.*
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> *3. In addition to the amount of Rs. 6,00,000/--*

(including the amount of Rs. 50,000/-- deposited in pursuance of impugned order), respondent No. 1 Mr. Abubakar Ahmed Said Saleh shall deposit additional security of Rs. 19,00,000/-- (Rupees Nineteen Lac only).

4. The rest of impugned order is hereby confirmed.

5. The revision is disposed of accordingly.

9. This Court is not inclined to cause the interference in the impugned order. However, since the Petitioner has deposited Rs. 15,00,000/-, the direction given by Additional Sessions Judge City Civil & Sessions Court, Greater Bombay is modified to the extent of amount towards additional security. The said Court has ordered to deposit additional security of Rs. 19,00,000/-. The amount of Rs. 15,00,000/- is deposited by the Petitioner, shall be treated as additional security instead of Rs. 19,00,000/- as ordered by the Sessions Court.

10. The conditions mentioned in the operative part of the order passed by Additional Chief Metropolitan Magistrate, are confirmed except clause (i) and (ii) of the said order.

The Petitioner is permitted to travel to South Africa and his stay shall remain confined to the South Africa, subject to the conditions contained in clause (iii) to (ix) of the order passed by the learned Magistrate.

11. Though, the Additional Chief Metropolitan Magistrate 19th Court Esplanade, Mumbai and Sessions Court acceded to the prayer of the Petitioner to allow him to travel abroad for six months, in the peculiar facts and circumstances of the present case and keeping in view the serious allegations against the Petitioner that he smuggled twelve yellow metal bars purported to be gold of 1 KG each, and the fact that the trial is pending, he is allowed to travel and stay in the South Africa till the end of December 2019. It is made clear that, the Petitioner shall furnish an undertaking before the Trial Court that, as and when the Trial Court needs his presence, he will make himself available before the Trial Court except on 16th October 2019. However, the Petitioner shall make an arrangement to file an application for exemption on 16th October 2019 before the concerned Court.

12. In the light of above, writ petition stands disposed of.

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

[S. S. SHINDE , J]