

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.543 of 2019

Hrishikesh Kundu

.. Petitioner/Accused No. 1

Vs.

State represented by its,
Deputy Superintendent of Police,
CBCID, Coimbatore. ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 16.04.2019 passed in
Crl.M.P.No.2833 of 2019 in C.C.No.92 of 2018 on the file of the
Chief Judicial Magistrate Court, Erode and to direct the Trial
Court to handover the passport No.Z2249985 to the petitioner for
the period from 20.06.2019 to 26.07.2019.

For Petitioner : Mr.M.Deivanandam

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set
aside the order dated 16.04.2019 passed in Crl.M.P.No.2833 of
2019 in C.C.No.92 of 2018 on the file of the Chief Judicial
Magistrate Court, Erode and to direct the Trial Court to hand
over the passport No.Z2249985 to the petitioner for the period
from 20.06.2019 to 26.07.2019.

2. The petitioner is facing prosecutions in C.C.Nos.91 and
92 of 2018 before the learned Chief Judicial Magistrate, Erode,
for the offences under Sections 120-B, 417, 420, 465 and 468
IPC. The petitioner was arrested during investigation and was
released on bail by the Sessions Court, Dharmapuri, on certain
conditions. The petitioner filed Crl.O.P.Nos.20184 & 20185 of
2013 for modification of the conditions, in which, this Court,
in M.P.Nos.1 of 2013 in Crl.O.P.Nos.20184 & 20185 of 2013,
directed the petitioner to surrender his passport before the

learned Judicial Magistrate III, Erode. Accordingly, the petitioner surrendered his passport to the learned Judicial Magistrate III, Erode. Now, the investigation has been completed and final report has been filed and the cases are now pending in C.C.Nos.91 & 92 of 2018 before the learned Chief Judicial Magistrate, Erode, as stated above. Now, the passport is under the custody of the learned Chief Judicial Magistrate, Erode.

3. The petitioner filed CrI.O.P.Nos.2736 & 2737 of 2014 before this Court for interim custody of his passport and this Court, by order dated 12.02.2014, issued the following directions:

"4. Considering the fact that the investigation in the cases stands completed, that the cases are now pending trial and taking note of the serious objections raised by the learned additional Public Prosecutor, who would place much emphasis on the fact that the cases relates to leakage of question papers and manipulation of answer sheets, this Court is of the considered opinion that the petitioner's right to travel abroad cannot be kept in a constant state of abeyance. Accordingly, this Court direct return of passport to the petitioner subject to the following conditions:

(i) on every occasion of the petitioner travelling abroad, he shall file an affidavit informing his address for contact as also the contact telephone/cellphone number while abroad and also undertake to appear before the Courts below as and when required; and
(ii) on such compliance, the petitioner's passport shall be returned to him by the Court below.

5. These Criminal Original Petition are disposed of with the above directions."

4. At this juncture, it is relevant to state here that earlier also, the petitioner was permitted to go abroad several times and after returning from abroad, the petitioner has surrendered his passport. While that being so, the petitioner filed an application in C.M.P.No.2833 of 2019 in C.C.No.92 of 2018 for the interim custody of his passport, since the petitioner wanted to go to London for his business purposes. The said application has been dismissed by the learned Chief Judicial Magistrate, Erode, by order dated 16.04.2019, on the following two grounds:

(a) that charges have to be framed, for which, the presence of the petitioner is required; and

(b) the petitioner had failed to furnish his contact telephone number or cell phone number while abroad.

5. Heard Mr.M.Deivanandam, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondent/State.

6. The learned counsel for the petitioner submitted that the petitioner is required to be in London from 03.07.2019 to 21.07.2019 for purchasing certain machineries for his business and the petitioner has also received an invitation from the manufacturer of the machinery, to come to London for inspection and purchase. The learned counsel further submitted that on earlier occasions, the petitioner had gone abroad and had returned to India and has surrendered his passport in the Trial Court.

7. Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) submitted that the main case has been posted for framing of charges on 24.06.2019 and the presence of the petitioner is essential and even, if one accused is absent, the Trial Court would find it difficult to proceed with the framing of charges.

8. The learned counsel for the petitioner submitted that the next hearing date is on 24.06.2019 and that the petitioner will appear before the Trial Court and answer the charges if the charges are framed on that date; if for some good reason, the Trial Court is not able to frame charges and adjourns the case to some other date between 02.07.2019 and 25.07.2019, the petitioner would file an affidavit before the Trial Court on 24.06.2019 to the effect that the counsel would answer the charges on his behalf and he would not repudiate the same or object to it at any time in future.

9. This Court gave its anxious consideration to the rival submissions.

10. The fact remains that the petitioner was permitted to go abroad earlier and after returning to India, he had surrendered his passport from time to time. In view of the above, this Court issues the following directions:

(a) the petitioner shall file his itinerary along with which he should give his address of stay in the U.K, his U.K mobile number and landline number, E-mail id, photo copy of the passport and mobile number of his family members in India and his e-mail ID;

(b) the petitioner shall appear before the Trial Court on 24.06.2019 and answer the charges, if framed;

(c) if the charges are not framed on 24.06.2019 and if the case is posted for hearing between 02.07.2019 and 26.07.2019, the petitioner shall file an undertaking affidavit before the Trial Court to the effect that the counsel nominated and named by him in the affidavit would answer the charges on his behalf and he would not repudiate the same or raise any objection to it in the future;

(d) the petitioner shall execute a bond for Rs.10,000/- with two sureties under Section 88 Cr.P.C. agreeing to return to India on or before 26.07.2019 and submit his passport to the Trial Court on 27.07.2019;

(e) on the petitioner submitting his contact details as directed in condition (a) above, the Trial Court shall return the passport to him before 24.06.2019, so that the petitioner applies for and gets his U.K visa;

(f) after getting the U.K. visa stamped on his passport, the petitioner shall furnish a photocopy of the same to the file of the Chief Judicial Magistrate, Erode, for the purpose of record;

(g) the petitioner shall surrender his passport on 27.07.2019 before the Trial Court.

In the result, the order dated 16.04.2019 passed in CrI.M.P.No.2833 of 2019 in C.C.No.92 of 2018 on the file of the Chief Judicial Magistrate, Erode, is set aside and the present Criminal revision petition is allowed with the above conditions.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Chief Judicial Magistrate,
Erode.

+3cc to Mr.M.Deivanandam, Advocate Sr.47764

CrI.R.C.No.543 of 2019

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srg 14/06/2019