

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.558 of 2019

M.Wasim Akram

... Petitioner/Accused

-Vs-

The State of Tamil Nadu
Rep. by the Inspector of Police
Central Crime Branch,
Chennai-600 007.

.. Respondent/Complainant

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure against the order dated 10.05.2019 passed in Crl.MP.No.1885 of 2019 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8.

For Petitioner : Mr.C.K.M.Appaji

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

O R D E R

This Criminal Revision Petition has been filed to set aside the order dated 10.05.2019 passed in Crl.MP.No.1885 of 2019 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8.

2. On the complaint lodged by one Satheesh Kumar, the respondent police have registered a case in Crime No.167 of 2018 dated 27.04.2018 under Section 420 IPC and Sections 24 & 10 of the Emigration Act, 1983 against three accused.

3. It is the case of the prosecution that the accused had collected around Rs.62 Lakhs from various persons on the promise of getting them job in Canada and had cheated them. During the course of investigation, the police arrested A1 and based on the confession statement of A1, the involvement of this petitioner

came to light. The petitioner was arrested on 04.09.2018 and based on his confession statement, a Volkswagen car bearing registration No.TN22 BS 5769 was seized from him as proceeds of crime and the same was produced before the jurisdictional Magistrate. After the car was produced, the same was handed over to the police for safe custody since there was no place in the Court. At present, the car is parked in the police station. While that being so, the petitioner filed CrI.MP.No.1885 of 2019 in CCB Crime No.167 of 2018 under Section 451 Cr.PC. for return of the vehicle, which has been dismissed by the trial Court, aggrieved by which, the petitioner is before this Court.

4. Heard Mr.C.K.M.Appaji, learned counsel for the petitioner and Mrs.Kritika Kamal.P, learned Government Advocate for the respondent.

5. Today, Mr.P.Jagannath, Head Constable, C.C.B Team IX, Veppery, Chennai, is present before this Court.

6. On instructions, the learned Government Advocate submitted that the investigation is still pending and charge sheet has not been filed in this case. She further contended that the car is liable to be confiscated under Section 452 Cr.P.C., on culmination of the trial and therefore, the same cannot be returned at this juncture.

7. In Sunderbhai Ambalal Desai vs. State of Gujarat, (2002) 10 SCC 290, the Hon'ble Supreme Court has stated that pragmatic approach will have to be adopted by the Court while passing interim custody orders under Section 451 Cr.PC. in respect of the seized vehicles. The allegation in this case is that the accused had collected around Rs.62 Lakhs from various persons on the promise of getting them job in Canada and had cheated them. It is not the case of the prosecution that the car was used for the offence. However, the police confession statement submitted by the accused shows that he had purchased the car with the money collected from the victims. At present, the car is kept in the police station and it is open to sunshine and rain. By the time the charge sheet is filed and if the accused are convicted, nothing will remain in the car except skeleton, which will only be of scrap value.

8. Under such circumstances, this Court is of the view that the interest of justice will be protected, if the interim custody of the car is directed to be given to the petitioner on the following conditions:

(a) The petitioner/accused shall deposit a sum of Rs.25,000/- to the credit of Crime No.167 of 2018 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8. On such deposit, the trial Court shall redeposit the said amount in the fixed deposit in anyone of the Nationalized Bank, so that it accrues interest.

(b) The petitioner/accused shall take photograph of the car and submit the same along with Compact Disc duly certified under Section 65-B of the Evidence Act.

(c) The petitioner/accused shall execute a bond for Rs.1,00,000/- (Rupees One Lakh Only) with two sureties and undertake to pay the said value of Rs.1 Lakh in the event of the trial Court passing orders of confiscation of the car under Section 452 Cr.PC. on culmination of the trial.

(d) The petitioner/accused and the sureties shall affix their photographs and give the copies of their AADHAR Card.

(e) In the event of confiscation orders being passed on culmination of the trial, the sum of Rs.25,000/- with interest shall be confiscated to the State.

(f) In the event of the petitioner/accused being acquitted, the sum of Rs.25,000/- shall be returned to the accused with interest.

9. Accordingly, the order dated 10.05.2019 passed in CrI.MP.No.1885 of 2019 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 is set aside and this Criminal Revision Petition is allowed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The CCB & CBCID Metropolitan Magistrate Court,
Egmore, Chennai-8.
2. The Inspector of Police
Central Crime Branch
Chennai-600 007.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.558 of 2019

PA (CO)
GMY (04/07/2019)



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