

15.12.2020

Sl. No. 01

Srimanta/Mithun

D/L

CRM/10482/2020

(Via Video Conference)

**In the matter of : Dilshan Castus Rukmal Ellawala @
Dilshan Castus.**

... Petitioner.

Mr. Malay Bhattacharyya, Adv.,
Mr. Subhrajyoti Ghosh, Adv.

...for the petitioner.

Mr. Rana Mukherjee, Adv.,
Mrs. Sujata Das, Adv.

...for the State.

This is an application under Section 439 of the Code of Criminal Procedure whereby the petitioner has sought to released on bail as he was not admitted on bail by the learned Chief Judicial Magistrate, Alipore, South 24-Parganas before whom he was produced and his bail prayer was rejected vide order dated 09.12.2020 in connection with ACGR No. 5573 of 2020, arising out of Parnasree Police Station Case No. 278 of 2020 dated 06.12.2020 under Section 14 of the Foreigners Act.

I have heard the learned Advocate for the petitioner and the learned Advocate for the State. It is submitted that the petitioner admittedly a Srilankan citizen entered into India with valid passport and Visa and he frequently visits India not for the purpose of business but also to meet his Indian wife and children who has a permanent address in Kolkata. It is submitted that the petitioner married with Indian national

woman, namely, Munmun Das and out of their wedlock a child was born. It is also submitted that the documents of Foreigners Registration Office, Kolkata would reveal that the petitioner is a frequent traveller to India for doing business. The petitioner came to India lastly on Indian Visa issued on 28.11.2020 to 25.07.2020 and his Visa has expired on 27.05.2020 but the petitioner applied for Visa renewal online because of pandemic situation caused due to Covid – 19 which resulted in suspension of an international flight to and from India and the Srilankan International Aviation Ministry has also not given any green signal for receiving any international flights due to pandemic situation. Accordingly, the petitioner stayed in India and it was not possible for him to move out from India with expiry of Visa on 27.05.2020. The pandemic situation in India had cropped up on and from 24th March, 2020 and there was complete lockdown throughout India and in such a situation there was no chance for the petitioner for movement out of India to his country and further he has applied for renewal of the Visa online. In this context, it is submitted by Mr. Rana Mukherjee, learned Advocate for the State that there is no provision of renewal of Visa online, it has to be physically done. Be that as it may, the order of notification of Government of India vide office Memorandum dated 05.05.2020 of the Ministry of Home Affairs, Foreign Division, clearly spells out that the grant of some casual services on GRATIS basis to foreign nationals presently stranded in India due to travel restrictions during Covid – 19. It reads that it has now been decided to extend the period of providing following consular services by the office of the Foreigners Regional Registration Office and that regular Visa, e-visa or stay stipulation, of such foreign nationals whose Visas have expired or would be expiring during the period from 01.02.2020 (Midnight) till the date on

which prohibition on international air travel of passengers from India is lifted by the Government of India, would be extended on 'GRATIS' basis on submission of online application by the foreigners. Such extensions would be granted for a period up to 30 days from the date of lifting of prohibition on international air travel of passengers from India without levy of overstay penalty. Exit to such foreign nationals, if so requested by them, will also be granted on the same lines.

This is what in the purpose of the office Memorandum of the Government of India, Foreigners Division, Ministry of Home Affairs and in this view of the matter the movement of the foreign nationals was also under complete lockdown situation because of the suspension of the international flights. It is submitted that even today, the international flights to and from Srilanka has not been resumed and international flight is not being received by the Srilankan Aviation Division. Therefore, it cannot be said that in the breach of provision of Section 14 of the Foreigners Act, 1946 and in complete defiance, the petitioner has continued to overstay in India inasmuch as he has a family in India having permanent address with a male child.

Learned Advocate for the petitioner adverted my attention to the forwarding report of the investigating officer dated 09.12.2020 submitted before the learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas to contend that the office memorandum by the Ministry of Home Affairs being the competent authority have made special provision that foreign nationals with regular Visa, e-visa or stay stipulation period expiring post 30.06.2020, shall be deemed to be valid and extended until 30 more days from the

date of resumption of normal international flight operation on GRATIS basis without levy of overstay penalty.

It is also submitted that the learned Additional Chief Judicial Magistrate has failed to consider Office Memorandum dated 05.5.2020 of the Government of India.

In the above premises, it would not be justified to keep the petitioner behind the bar because as a person he has a right to life and liberty enshrined under Article 21 of the Constitution of India, ergo, the petitioner be released on bail on furnishing a bond of Rs. 25,000/- with two sureties of like amount, one of whom must be a local of the locality where the address of the petitioner's wife is situated subject to condition that after the resumption of international flights from Srilanka he would move out from the Country, subject to satisfaction of Id ACJM, Alipore, 24 Parganas (S).

Thus, CRM/10482/2020 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Shivakant Prasad, J.)