

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9100 of 2020

Azmal Khan Bin Nagore Mera
S/o Nagore Mera
17, Jalan Kedah
George Town 10050, Pulau Finan
Malaysia.

... Petitioner

Vs.

1.State Rep by
The Commissioner of Customs (AIU)
Chennai - 600 001.

2.State Rep by
The Superintendent of Customs
Prosecution Unit (AIR)
New Customs House
Meenambakkam, Chennai - 600 027.

3.The Foreigners Regional Registration Officer
Sastri Bhavan, No.26 Haddows Road
Chennai - 600 034.

...Respondents

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code, to direct the 3rd respondent to accept his online representation dated 06.04.2020 and further plead to permit the petitioner to travel Malaysia with his Malaysian passport bearing No.A35245905.

For Petitioner : Mr.R.Vivekananthan

For Respondents: Mr.Vishnu
Special Public Prosecutor for Customs
for RR1 and 2
Mr.G.Karthikeyan
Assistant Solicitor General of India
for R2

ORDER

The petition has been filed for direction directing the 3rd respondent to accept the online representation dated 06.04.2020 and also seeking permission to the petitioner to travel Malaysia with his Malaysian Passport bearing No.A35245905.

2.The learned counsel for the petitioner would submit that the petitioner is an accused in O.S.No.77/2019 INT AIR/OS No.707/2019 AIU, registered for the offences under Sections 132 and 135 (1) (a) & (b) of the Customs Act 1962 r/w Foreign Regulation Act 1992. Further he was arrested and remanded to judicial custody on 03.08.2019. Further the petitioner's original Passport was seized by the 3rd respondent herein on the same day. Subsequently he filed CrI.M.P.No.5723 of 2019, to release him on bail and by order date 09.09.2019, the learned Judicial Magistrate, Alandur released the petitioner with certain conditions. Thereafter he filed Crmp.No.7404 of 2019 for return of his Original Passport on the file of the learned Judicial Magistrate, Alandur, and the same was allowed on 06.12.2019. Now, the petitioner's wife is living in Malaysia and fell ill and as such he wants to go Malaysia to see his wife. Therefore, he filed a petition in C.M.P.No.96 of 2020 for seeking permission to visit Malaysia to see his wife. The said C.M.P.No.96 of 2019 was also allowed by order dated 11.03.2020, in which the petitioner was permitted to visit Malaysia and ordered to return back to India on or before 28.03.2020. He further submitted that in the meanwhile, visa issued by the 3rd respondent herein has got expired and as such he sought permission before the 3rd respondent through online to extend his visa to visit Malaysia. The said online application was returned without any consideration. Hence the petitioner filed this petition for direction to direct the 3rd respondent to consider his online representation.

3.The learned counsel appearing for the 3rd respondent filed counter and represented that the 3rd respondent is not a party before the Court below and he was never heard to consider the representation of the petitioner. Further submitted that the petitioner has to obtain No Objection Certificate from the 2nd respondent, who registered the case as against the petitioner under Sections 132 and 135 (1) (a) & (b) of the Customs Act 1962 r/w Foreign Regulation Act 1992, to extend the visa. Therefore without any NOC issued from the 2nd respondent, the 3rd respondent cannot extend the visa as requested by the petitioner.

4.Heard Mr.R.Vivekananthan, learned counsel appearing for the petitioner; Mr.Vishnu learned Special Public Prosecutor for Customs appearing for the 1st and 2nd respondent and

Mr.G.Karthikeyan, Assistant Solicitor General of India, appearing for the 3rd respondent.

5.The petitioner is an accused in O.S.No.77/2019 INT AIR/OS No.707/2019 AIU, registered for the offences under Sections 132 and 135 (1) (a) & (b) of the Customs Act 1962 r/w Foreign Regulation Act 1992 on the file of the 2nd respondent herein. Further alleging that the petitioner was in possession of 10 bundles totally 55 numbers of white colour mini polythene packets containing glittery stones and were recovered. On verification it is found that they are assorted diamonds weighing 2996.17 carat, value of at Rs.2,24,61,320/-. In which he was arrested and remanded to judicial custody from 03.08.2019 by the 2nd respondent herein. Thereafter, the petitioner was released on bail by order dated 09.09.2019 in Crl.O.P.No.5723 of 2019, with certain conditions. Thereafter, he filed another application in Crl.M.P.No.7404 of 2019 for return of his passport. The learned Judicial Magistrate, while allowing the petitioner imposed certain conditions on the petitioner, which are extracted hereunder.

"1.The petitioner shall execute a bond for a sum of Rs.5 lakhs with one surety for the like sum,
2.if he travel abroad he shall inform the same to this court with correct address.
3.furnish the photocopy of the passport and he shall undertakes to return the passport as and when required by this court,
4.he shall comply the adjudicating proceedings before the concerned authority."

6.Further the petitioner's wife is residing at Malaysia and also she fell ill. Therefore, the petitioner filed Crl.M.P.No.96 of 2020 seeking permission to travel Malaysia to take care of his wife. On perusal of the medical records produced by the petitioner and after hearing the 2nd respondent the learned Magistrate by an order dated 11.03.2020 permitted the petitioner to visit Malaysia on condition that the petitioner shall return to India on or before 28.03.2020. In the meanwhile visa issued by the 3rd respondent has got expired and as such the petitioner submitted online representation to the 3rd respondent herein to extend the visa as permitted by the learned Judicial Magistrate, Alandur in Crl.M.P.No.96 of 2020 dated 11.03.2020.

7.The learned Assistant Solicitor General of India appearing for the 3rd respondent reported that though the Court below has allowed the petitioner to visit Malaysia, the 3rd respondent without consent or No Objection Certificate from the 2nd respondent cannot extend the visa for the petitioner herein.

Further the 3rd respondent is not a party in any of the Court proceedings. It is seen on the complaint lodged by the 2nd respondent herein in O.S.No.77/2019 INT AIR/OS No.707/2019 AIU, registered for the offences under Sections 132 and 135 (1) (a) & (b) of the Customs Act 1962 r/w Foreign Regulation Act 1992 the petitioner was arrested and remanded to judicial custody. While pending investigation the petitioner herein approached the learned Judicial Magistrate, Alandur, to permit him to visit Malaysia, to see his wife, who fell ill. Accordingly, in CrI.M.P.No.96 of 2020, the Court below granted permission to the petitioner to visit Malaysia. Now the investigation is pending on the file of the 2nd respondent. When the Court below permitted the petitioner to visit Malaysia, though the 3rd respondent is not a party to the Court proceedings, they have to obey the order passed by the Court below. However, the learned Assistant Solicitor General of India representing the 3rd respondent would contended that being the authority, he is bound by law and he has to follow certain procedure for extending the visa to the petitioner. Since the 3rd respondent is not a party in the Court proceedings, after hearing the 2nd respondent, and also considering the objections raised by the 2nd respondent the Court below permitted the petitioner to visit Malaysia in CrI.M.P.No.96 of 2020 dated 11.03.2020.

8. In view of the above discussion, the 3rd respondent is directed to grant exit permit/clearance to the petitioner without asking for any No Objection Certificate from the 2nd respondent to visit Malaysia by extending the period of visa for six months. Now representation of the petitioner dated 26.07.2020 in Application No.2503203S970U is pending on the file of the 3rd respondent. Therefore, the 3rd respondent is directed to pass orders as directed by the Court below within a period of two weeks from the date of receipt of a copy of this order. Further, it is also made clear that the permission granted by the learned Magistrate, that the petitioner has to return back to India on or before 28.03.2020 has got expired. Therefore, the petitioner is directed to return back to India within a period of 15 days from the date of his departure from India to Malaysia, failing which the 2nd respondent is at liberty to take appropriate action as against the petitioner in accordance with law.

9. With the above direction, the Criminal Original Petition is disposed of.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Customs (AIU)
Chennai - 600 001.

2.The Superintendent of Customs
Prosecution Unit (AIR)
New Customs House
Meenambakkam, Chennai - 600 027.

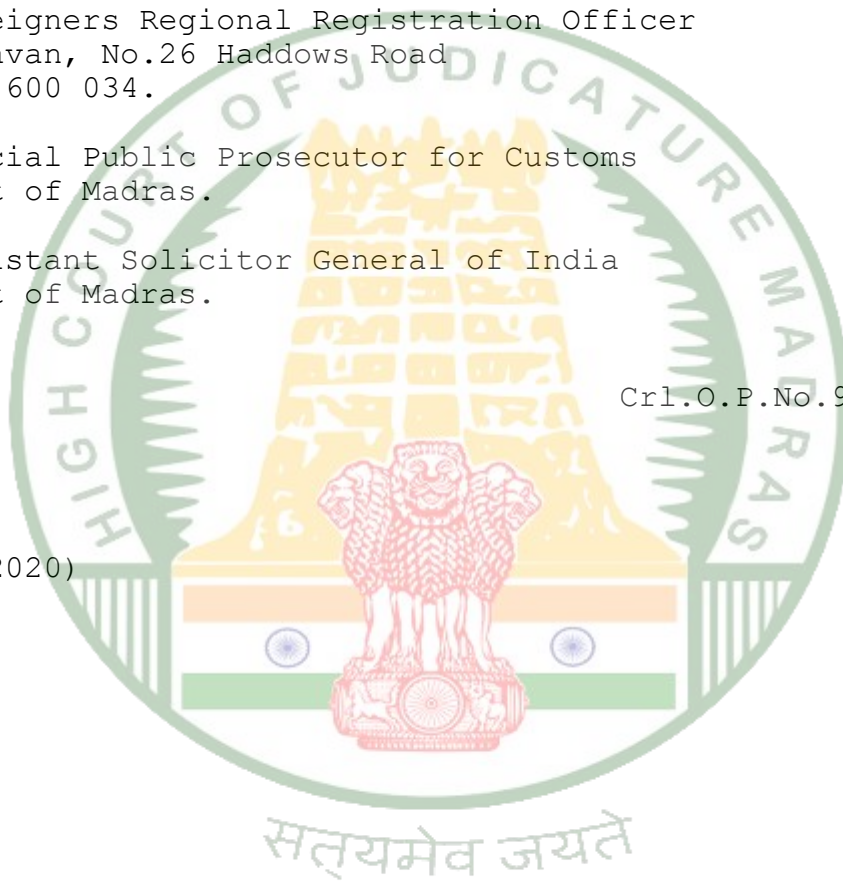
3.The Foreigners Regional Registration Officer
Sastri Bhavan, No.26 Haddows Road
Chennai - 600 034.

4.The Special Public Prosecutor for Customs
High Court of Madras.

5.The Assistant Solicitor General of India
High Court of Madras.

Cr1.O.P.No.9100 of 2020

BR(CO)
SP(30/09/2020)



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