

\$~79

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 6194/2019 & CRL.M.A. 41776/2019

KANIKA VAID

..... Petitioner

Through: Petitioner in person with Mr. Sumit Choudhary, Mr. Sunil Bhorla & Mr. Ankit Rana, Advocates.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Mr. Raghuvinder Varma, APP for State.

R-2 in person with Mr. Rohit Goel, Advocate for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

%

**29.01.2020**

In terms of proceedings dated 27.01.2020, it has been submitted on behalf of the respondent no.2 that the amount of Rs.5,00,000/- in the form of an FDR has been deposited before the learned Trial Court and the copy of the details thereof has been submitted along with the affidavit dated 28.01.2020 of the respondent no.2.

The petitioner vide the present petition is aggrieved by the impugned order dated 25.11.2019 of the learned Special Judge, NDPS, North whereby the order of the learned Trial Court dated 26.08.2019 in FIR No.403/2018 vide which order, permission sought by the respondent no.2 herein to travel abroad to Australia to resume his duties was declined with it having been observed to the effect that there was every likelihood that the accused/ respondent no.2 would not return to India and that furthermore, as of that

date i.e. 26.08.2019, the respondent no.2 did not even possess a valid passport to travel abroad which order vide the impugned order dated 25.11.2019 of the learned Special Judge, NDPS North was set aside with conditions imposed thereby to the effect:-

***“13. In view of such observations, this court passes the following directions:-***

- i. That the order dated 26.08.2019 passed in FIR No.403/18, U/S 498 A/406/313/354-A/34 IPC, PS: Model Town is set aside and thus, the applicant is permitted to travel / go abroad for resuming his duties;***
- ii. That the court directs the Passport Authority to consider the application of the applicant to be moved to renew the passport of the applicant in accordance with the law and rules without influencing by any findings passed in this order;***
- iii. That in case the applicant joined his duties in Australia, then the applicant shall supply all his functioning mobile numbers and the place of abode within 10 days to the Ld. Trial Court as well as to the Consulate General of India in the said country;***
- iv. That the applicant shall not visit any other country except India and Australia without obtaining prior permission of the court;***
- v. That the applicant shall submit his passport within 48 hours immediately to the office of the Consulate General of India in Australia and whenever he shall have to come to India, he shall have to apply for the release of his passport;***
- vi. That the applicant shall appear either himself or through his counsel on each date of hearing unless the presence of the applicant is unavoidable, as per directions to be passed, by the Ld. Trial Court. Ld. Counsel for the applicant shall submit before the Ld. Trial Court that he will not dispute the identity of the applicant during trial on dates when the applicant will appear through his counsel;***
- vii. That in case, the applicant violates any of the conditions, then the Ld. Trial Court is at liberty to pass any order in***

***accordance with the law including the order to reconsider the earlier order passed.”***

*Inter alia* vide the impugned order dated 25.11.2019, it was observed to the effect that the applicant who has employment in Australia admittedly had a right of his employment there and that he could thus travel to Australia with reasonable restrictions and conditions imposed.

During the course of the present proceedings, in as much as, the matter vide order dated 17.01.2020 had been listed for 31.01.2020 on an application CRL.M.A.1448/2019 filed on behalf of the respondent no.2 seeking an early hearing, the matter had been taken up for consideration, in as much as, the submissions made on behalf of the respondent no.2 were to the effect that in the event of his not being granted permission to travel abroad and to resume his duties by 31.01.2020 at Australia there was a likelihood of his employment being effected.

The status report of the State along with the copy of the email received from the employer of the respondent no.2 has already been placed on the record which states to the effect that if the respondent no.2 did not return to work by 31.01.2020, his employment would be at risk because the employer would not extend the period of unpaid leave.

Submissions had been made on behalf of the petitioner as were also indicated and born out from the order dated 26.08.2019 of the learned MM (North), Mahila Court in FIR No.403/2018 that not a penny had been paid towards maintenance for the petitioner nor the minor child born of the wedlock between the petitioner no.1 and the respondent no.2 and it had been submitted on behalf of the petitioner that despite the directions of the

learned Trial Court in domestic violence proceedings granting interim maintenance to the tune of Rs.40,000/- per month, which were so granted vide order dated 08.08.2019 in Complaint Case No.2060/2018, the respondent no.2 having challenged the same vide CA No.176/2019, made an offer for the payment of a sum of only Rs.5,000/- per month for his daughter and vide order dated 04.10.2019 of the learned ASJ, Special Judge, NDPS North, the order of the Magistrate granting interim maintenance of a sum of Rs.40,000/- per month was stayed subject to the transfer of Rs.5,000/- per month for the minor child of the parties, in relation to which it is submitted on behalf of the petitioner that even that Rs.5,000/- per month had not been paid by the respondent no.2 except of payment of such amounts only thrice.

It was in these circumstances that vide order dated 27.01.2020 that the respondent no.2 was directed to deposit a sum of Rs.5,00,000/- in the form of an FDR before the learned Trial Court which has since been so deposited by the respondent no .2.

As regards the prayer that has been made by the petitioner seeking the release of the said amount of Rs.5,00,000/- which has been deposited by the respondent no.2 in terms of directions dated 27.01.2020 in the present petition, in as much as, the proceedings are still pending against the order of grant of maintenance dated 08.08.2019 in CA No.176/2019, presently no such order for the release of the amount of Rs.5,00,000/- as deposited by the respondent no.2 can be granted. However, the learned Courts seized with the maintenance proceedings qua maintenance to be granted to the petitioner and the minor child born of the wedlock between the petitioner no.1 and the respondent no.2 may consider the aspect of the release of the said sum of

Rs.5,00,000/- for the minor child of the respondent no.2 if considered appropriate during the course of the said maintenance proceedings. No further orders in relation to the said aspect are called for.

As regards the submissions made on behalf of the petitioner that the respondent no.2 be not permitted to travel abroad for his employment, as rightly observed by the learned Revisional Court vide the impugned order dated 25.11.2019, no such restriction as sought by the respondent no.2, is presently required to be imposed in view of the specific conditions imposed vide para 13 of the impugned order dated 25.11.2019, which shall continue.

It has however, been submitted on behalf of the petitioner and not refuted on behalf of the respondent no.2 that the respondent no.2 has since been issued a fresh passport, the copy of the same be placed on the record and be supplied to the State and in as much as it has been submitted on behalf of the petitioner that the details of the spouse of the respondent no.2 and of the child born of the wedlock between the petitioner and the respondent no.2 have not been given to the Australian Consulate and to the Indian Consulate, the details in relation thereto, shall be provided by the respondent no.2 to both Consulates before he leaves the country.

No further directions are called for.

The petition stands disposed of.

Copy of the order be given Dasti under the signatures of the Court Master.

**ANU MALHOTRA, J**

**JANUARY 29, 2020**

*'neha chopra'*

CRL.M.C. 6194/2019