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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:-20.05.2020

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W.P. (Crl.) 829/2020

JERAMBHAI VANMALIBHAI PATEL & ANR. Petitioners

Through: Mr.Harshit Tolia, Sr.Adv. with
Mr.Anne Mathew, Adv.

Versus

STATE (NCT OF DELHI) & ORS. Respondents

Through: Mr.Sanjay Loa, ASC for R-1.
Ms.Sanju Rai, I.O.
Mr.P Jauhar, Adv for complainant.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CRL M.A. 6618/2020

1. Allowed, subject to all just exceptions.

CRL.M.As. 6619/2020 & 6620/2020

2. The petitioners shall file their duly attested affidavits and court fees within four weeks of the lockdown being lifted.

3. The applications stand disposed of.

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4. The present petition has been taken up for hearing through video conferencing.

5. Vide the present petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., the two petitioners seek quashing of Look Out Circulars issued against them being LOC Suspect No. 1943642 and 1943643 issued vide letter dated 24.05.2019 by the Bureau of Immigration, Ministry of Home Affairs, Government of India vide its letter bearing No. 1/SIC/ACK/LOC/201 5323.

6. The case of the petitioners is that based on a complaint of their estranged daughter-in-law Mrs.Natasha Kapoor against them and their son namely Mr.Dirshan Vanmali Patel, FIR No. 0055/2017 under Sections 498A/406/34 of the IPC was registered in P.S Crime (Women) Cell, Nanak Pura, New Delhi.

7. Learned senior counsel for the petitioners submits that the petitioners are senior citizens, the petitioner no.1 being 82 years of age and petitioner no.2 being 72 years age, who are citizens and permanent residents of the Republic of South Africa and have nothing to do with the allegations levelled in the FIR. In fact, the marriage between the complainant and their son already stands dissolved as per the applicable domestic laws of the Republic of South Africa, vide a decree of divorce passed on 20.12.2017 by the concerned court at Cape Town. He further submits that even though the petitioners have always cooperated with the investigation, having sent their written representations to the Investigating Officer (I.O) on 23.02.2018, they were detained at the Mumbai Airport when they landed on 06.12.2019 for a religious visit to India. He submits that it was only then that they were informed that LOCs had been issued against them by the Bureau of Immigration at the request of the Deputy Commissioner of Police, SPU W&C, PTS Malviya Nagar. Resultantly, they were detained at the airport itself and released after a lengthy investigation of four hours conducted by the I.O.

8. He submits that keeping in view the failing health of the petitioners and the ongoing pandemic, they need to be treated by their doctors at Johannesburg, South Africa. In view of the recent information received from the Consulate of the Republic of South

Africa, an emergency flight from India to South Africa has been scheduled on 22.05.2020 for repatriation of all South African citizens in Indian territory; the fact that the Court of the learned Metropolitan Magistrate at Dwarka Courts is not functional on account of being in a containment zone, the petitioners have been compelled to approach this Court. He submits that the petitioners have always cooperated with the investigation and prays that in case any further interrogation is needed, keeping in view the present pandemic, the I.O. may be directed to interrogate them as and when required through video conferencing which the petitioners undertake to join as and when directed. He further submits that without prejudice to their contention that no amount is payable to the complainant from them, the petitioners are willing to forthwith remit a sum of Rs.40 lakhs in the complainant's bank account, subject to the same being adjusted against the arrears of maintenance as may be finally adjudicated by the concerned Mahila Court where the DV proceedings initiated by the complainant are pending. The petitioners further undertake not to create any third party rights in the property situated at Flat no.801/B, Anmol Apartment, Gandevi Rd, Lunsikui, Navsari, Gujarat without the leave of the DV Court. He submits that the petitioner undertakes to come to India at the direction of the I.O./Court after the pandemic of COVID 19 is over and that their close relative namely one Mr.Sureshbhai Keshavbhai Akbari has already filed an undertaking in this regard by way of the affidavit annexed with the petition as Annexure P-13.

9. By placing reliance on the decision dated 11.08.2010 of this Court in *Sumer Singh Salkan v. Asstt. Director & Ors. [W.P.(CRL.) No.1315/2008]*, he submits that once the petitioners have joined

investigation and are willing to extend their fullest cooperation in the investigation, the LOCs have served their purpose and therefore there is no reason to deny the petitioners an opportunity to return to their home in South Africa and get the appropriate treatment.

10. Issue notice. Mr.Sanjay Lao, ASC and Mr.P Jauhar, Adv accept notice for the State and the complainant respectively, and waive off their right to file reply. Accordingly, with the consent of the parties, the matter is taken up for final hearing.

11. Mr. Lao fairly submits that once the petitioners are undertaking to join investigation through Video Conferencing and to pay a sum of Rs.40 lakhs to the complainant by tomorrow itself, i.e., 21.05.2020, the purpose of the LOCs stands fulfilled and, therefore, does not oppose the present petition.

12. Mr. Jauhar fairly does not oppose the petition, subject to the petitioners' adhering to their undertaking to join investigation through video conferencing, but also appear before the I.O./Court, if so directed, after the COVID-19 pandemic is over/global travel restrictions are eased out.

13. In view of the fair stand taken by the learned counsel for the respondent as also for the complainant, the petition is allowed and the captioned two LOCs issued against the petitioners are quashed; the same would be subject to the petitioners remitting a sum of Rs.40 lakhs to the complainant's bank account by 3 P.M. tomorrow, i.e. 21.05.2020. As requested by Mr. Jauhar, the amount shall be remitted to the bank account of the complainant bearing the following particulars:

Account no.071401505077,

ICICI Bank, Lajpat Nagar 4,

New Delhi, RTGS/NEFT IFS CODE: ICIC0000714.

14. It is further directed that the petitioners shall remain bound by their undertaking to join investigation through video conferencing and also in person before the I.O./ Court, if the need so arises, once the pandemic of COVID 19 is over/global travel restrictions imposed on account of the pandemic are eased out. They will also remain bound by their undertaking to not create third party rights in the flat bearing no.801/B, Anmol Apartment, Gandevi Rd, Lunsikui, Navsari, Gujarat. Upon receiving confirmation from the complainant as also the petitioner that the amount of Rs. 40 lakh has been remitted in the aforesaid account of the complainant, the concerned I.O. and DCP will inform the Bureau of Immigration, Ministry of Home Affairs, Government of India, immigration authorities at the Mumbai Airport and any other airports, as may be required, about this judgment so as to facilitate the petitioners' travel on the repatriation flight to South Africa on 22.05.2020. The petitioners will also be at liberty to inform the concerned authorities with a web copy of this judgment.

15. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through email.

MAY 20, 2020 /sr

REKHA PALLI, J