

30.09.2021

Sl. No. 218

Srimanta

Ct. No. – 35

D/L

**CRR/1742/2021
(Via Video Conference)**

In Re : An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 against the order dated 11th August, 2021 passed by the Learned Additional Chief Judicial Magistrate, Alipore in connection with Tiljala Police Station Case No. 395/2020 dated 31st December, 2020 under Sections 120B/406/420 of the Indian Penal Code, 1860 (corresponding to ACGR No. 5914/2020) now pending before the Court of the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

In the matter of : Gianfranco Tommasi.

... petitioner.

Mr. Sandipan Ganguly
Mr. Shoubhik Mitter
Ms. Sreya Basu Mallick
Mr. Lokenath Chatterjee

...for the petitioner.

Mr. Sudip Ghosh
Mr. Bitosok Banerjee

...for the State.

Mr. Tarique Quasimuddin
Ms. Sanchita Chaudhuri

...for the opposite party no. 2.

It appears that the petitioner has been implicated as an accused in a case under Sections 120B/406/420 of the Indian Penal Code, 1860 pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas.

Petitioner is a citizen of Italy.

It appears from the complaint that the dispute is arising out of a commercial transaction due to alleged non-payment by the accused persons to the opposite party no. 2 against the supply of the leather materials. The learned advocate appearing for the opposite party no. 2 submits that there is

an outstanding due of Rs.72,00,000/- from the accused persons. It is submitted by Mr. Sandipan Ganguly, learned senior advocate that the petitioner is only a commission agent.

The ground assigned by the learned Magistrate in the order impugned does not appear to be sustainable. Merely because an application for cancellation of the bail of petitioner is pending at the behest of the opposite party no. 2, the passport of the petitioner cannot be unnecessarily withheld by the investigating agency.

It appears that the VISA of the petitioner will expire on 20th October, 2021. Mr. Ganguly submits that unless the petitioner is permitted to leave India, he cannot apply for a fresh VISA since for that purpose the petitioner requires to be physically present in Italy.

I am of the opinion that having regard to the nature of the allegations levelled against the petitioner, the petitioner should be permitted to leave India to obtain a fresh VISA from Italy.

In view of the above, this revisional application is disposed of with a direction upon the investigating agency to return the passport of the petitioner within a period of 48 hours from date. The passport of the petitioner will be returned subject to furnishing a bond of Rs.5,00,000/- with two sureties of like amount each. The details of two sureties are furnished as follows:-

- (i) Tanima Chanda Sengupta,
W/o – Subhamoy Sengupta,
E – 164, Ramgarh Naktala,
Kolkata, West Bengal,
Pin – 700047.
- (ii) Subhamoy Sengupta,
S/o – Sambhunath Sengupta,

153/A, Baro Jonepur,
Kanchrapara (M),
North 24-Parganas,
West Bengal,
Pin – 743145.

The sureties will submit their identity proof before the learned Magistrate in the Court below.

Additionally, the petitioner will also furnish a bank guarantee of Rs.5,00,000/- (five lakh) before the learned Magistrate in the Court below.

An undertaking has been given by Mr. Ganguly on behalf of the petitioner who is present in Court that the petitioner will apply online for his VISA within seven days from date. He also undertakes to come back to India and to face the trial within a period of two months from date. The petitioner shall also file the proof of his application for VISA before the learned Magistrate in the Court below within ten days from date.

With this direction C.R.R. 1742 of 2021 is disposed of.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Kausik Chanda, J.)