

**HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.27 OF 2020**

SAMIR SARDANA

.... Petitioner

VS

THE OFFICE OF THE DGP, GOA POLICEHQ, Respondents
PANAJI AND 8 ORS.

The petitioner in person.

Mr. G. Nagvenkar, Additional Public Prosecutor for respondent Nos.1 and 2.

Mr. Pravin Faldessai, Assistant Solicitor General of India for respondent Nos.3 to 9.

**CORAM: M.S. SONAK &
SMT. M.S. JAWALKAR,JJ
DATE : 7th APRIL, 2021.**

ORAL ORDER:(Per M.S.Sonak,J)

Heard Mr. Sardana who appears in person and Mr. P. Faldessai, learned Additional Solicitor General of India on behalf of respondent Nos. 3 to 9 and Mr. G. Nagvenkar, learned Additional Public Prosecutor for respondent No.2.

2. The petitioner, presses the following reliefs in the petition:

I) The Court is requested to grant the petitioner, the right to leave this nation, as stated in Relief No.7, in para 26, of this petition.

II) The Court is requested to quash the enquiry on the petitioner, discharge the petitioner, relieve the petitioner from the need and terms of bail, as stated in the Relief No.3 and 4, as listed by the petitioner, in para 26 of this petition.

III) The court is requested to pass order to direct the agencies of the Goa State and the Government of India, to provide the information, as listed in Reliefs No.8 to 16, listed in Para 26 of the petition.

IV) The Court is requested to pass suitable order for Public Law Compensation under writ, as stated in Relief No.16, in Para 26 of this petition.

3. The petitioner was arrested on 01/02/2016 under Section 41 of the Code of Criminal Procedure (Cr.P.C.). He applied for bail and was granted bail by the learned Judicial Magistrate First Class, at Vasco Da Gama, Goa vide order dated 11/02/2016. The operative portion of this order reads as follows:

"The accused is released on bail on the following conditions:

(1) Accused to furnish personal bond of ₹10,000/- (Rupees Ten Thousand Only) and one surety in the like amount.

(2) The accused shall report the ATS/Investigating Agency in Goa for 04 days from 10.30 a.m. to 12.00 noon from next day after the release.

(3) Accused should not leave the country without permission of the Court."

4. The petitioner, sometime in August 2018 applied for leave to travel abroad. This application was disposed of by the learned Judicial Magistrate First Class, Vasco Da Gama, Goa vide order dated 10/08/2018. The permission was granted subject to certain conditions.

The conditions were imposed because the learned Judicial Magistrate was informed that certain inquiries are pending against the petitioner with the Ministry of Home Affairs, New Delhi, and some other agencies as well. The operative portion of the order dated 10/08/2010 reads as follows:

“The application stands partly allowed.

The Applicant is permitted to go abroad, however, applicant to furnish the address and phone number alongwith copy of Visa prior to leaving the Country wherein Visas are issued prior to departure in the Countries in cases where Visas are issued by Countries after arrival, to submit those Visas by post and also if Applicant frequently changes the Countries then all the addresses wherein he goes abroad to submit to the Court, said addresses accordingly.

Pronounced in the open Court.

Proceeding closed.”

5. The petitioner contends that to date, he has not been apprised of any inquiry pending against him. He submits that based on some vague assertions that inquiries are pending against him, he cannot be prevented from traveling abroad. He submits that no conditions can be imposed upon him by the Judicial Magistrate when it comes to his right to travel abroad. Mr. Sardana submitted that he is a citizen of India by birth and therefore he has a fundamental right to travel abroad and this right, cannot be restricted or denied based on vague assertions of pending inquiries by various authorities. He has

therefore submitted that the condition in the order dated 11/02/2016 made by the learned Judicial Magistrate First Class, Vasco Da Gama Gama that he should not leave the country without the permission of the Court be modified and ordered to be deleted.

6. In this case, we had directed the authorities to file affidavits to indicate whether any inquiry or prosecution or investigations are indeed pending against the petitioner. The State Authorities had never stated that any such proceedings were pending against the petitioner.

7. Respondent no.3 i.e. the Joint Secretary, Internal Security-II Division, Ministry of Home Affairs, Government of India has filed an affidavit in this matter on 03/07/2020. This affidavit is verified by Mr. Mahesh Kumar Chahar, Under Secretary, Legal Cell, Internal Security-II Division, Ministry of Home Affairs, New Delhi. Paragraphs 2, 3, and 4 of this affidavit which is found on the page Nos. 247 and 248 of the paper book of this petition read as follows:

“2. I respectfully submit that in the month of March, 2016, Ministry of Home Affairs (MHA) received a secret letter dated 19.2.2016 from inspector General of Police, Goa informing about the arrest of a suspect Shri Samir Sardana (hereinafter referred as petitioner) from Goa on 01.02.2016. Goa Police requested MHA to seek assistance of Ministry of External Affairs (MEA) to enquire about the activities of petitioner while he was abroad. MHA forwarded the letter of IGP, Goa to the Central Agencies concerned and the Agencies provided Arrival/Departure details and the overseas enquiries report in respect of the petitioner. The same were accordingly transmitted to the Goa Police. The communications received from Central

Agencies was of SECRET nature.

3. It is further submitted that from 28.8.2018 onwards, the petitioner sent 09 RTI Applications to the Appellate Authority Joint Secretary (Internal Security-II), MHA seeking various information relating to communications received from/sent to Goa Police and about investigation being conducted by Law Enforcement Agencies like Goa Police, National Investigation Agency, Intelligence Bureau, Anti Terror Squad etc. The CPIO i.e. Under Secretary (Legal), MHA provided the available information and his RTI Application was transferred to concerned CPIO under section 6(3)(ii) of RTI Act, 2005 for information related to the National Investigation Agency/Central Agencies and Goa Police. Secret information received from the Central Agencies was denied under provisions of section 8(1)(h) of RTI Act, 2005.

4. It is respectfully submitted that the Joint Secretary, Internal Security-II Division, MHA has not conducted any enquiry or investigation pertaining to 'the' petitioner and the Internal Security-II Division, MHA has provided all the permissible information available with it, to the petitioner."

8. Mr. Mahesh Kumar Chahar, Under Secretary Legal Cell, Internal Security-II Division, Ministry of Home Affairs, New Delhi has stated that he is fully conversant with the facts and circumstances of the subject matter of this Writ Petition and he has gone through, perused and understood the relevant records and material with respect to the subject of this matter of this petition before filing this affidavit. Paragraph 4 of the affidavit is relevant, where it is stated that the Joint Secretary, Internal Security-II Division, MHA has not conducted any

inquiry or investigation pertaining to the petitioner.

9. Mr. Vikram Khalate, Superintendent of Police, National Investigation Agency (N.I.A.) Ministry of Home Affairs, Mumbai Branch has also filed an affidavit in this Court on 12/03/2021. In this affidavit, in paragraph 5 it is stated that no case is registered against the petitioner by N.I.A.

10. Similarly, Mr. Valleswara Babuji Thokaka, the Senior Divisional Security Commissioner/ RPF, South Western Railway, Hubballi has also filed a reply/ affidavit in this Court on 12/03/2021. In this affidavit, it is stated that respondent No.9 i.e. the Railways who were in no way related to the arrest of the petitioner, and therefore, they have really not concerned with the petitioner or his arrest in Goa.

11. On the aforesaid affidavits, it appears that none of the aforesaid Authorities have any inquiries or investigations pending against the petitioner. As noted earlier, it is not the case of the State Authorities that they have any case or investigation or inquiries pending against the petitioner. If this is a position, we see no ground to impose any restraint upon the petitioner's travel abroad on the ground of pendency of such inquiries, investigations, or cases.

12. The only reason which prompted the JMFC in imposing a condition that the petitioner should not leave the country without the permission of the Court whilst granting bail to him vide order dated 11/02/2016 was the alleged pendency of such inquiries, investigations,

or cases. His impression was further reinforced at the time when the petitioner applied for permission to go abroad and such application was disposed of by 10/08/2018.

13. Now that position is clarified, we see no good reason as to why condition No.3 in the bail order dated 11/02/2016 should continue any further. Ultimately, the right to travel abroad is a fundamental right and if any restrictions have to be imposed on this right, then, such restrictions should be backed by law. Accordingly, we delete condition No.3 from the order dated 11/02/2016 made by the JMFC, Vasco Da Gama, Goa in bail Application No.19/2016/B, based on which the petitioner was released on bail. This means that the petitioner will no longer have to seek the permission of JMFC, B Court Vasco Da Gama for traveling abroad.

14. The petitioner, now has certain grievances about the furnish of information. According to us, the petitioner has sufficient remedies under various legislation including the Right to Information Act for seeking the same. The petitioner further points out that some of the respondents are exempted from the purview of the Right to Information. If that is so, it is for the petitioner to take out appropriate proceedings to secure information provided, such information can be made available to the petitioner in terms of the law. The petitioner will have to make out the case before the appropriate forum that he has the right to receive such information and the same is being unlawfully denied to him.

15. Besides we have noted in the affidavits filed by some of the respondents that they stated that whatever information could be furnished, has already been furnished to the petitioner.

16. The petitioner has also sought relief to quash the inquiries pending against the petitioner. Now that it is revealed that no such inquiries are pending, there is no question of quashing any such inquiries. In any case, no such blanket orders can be made in such matters.

17. The petitioner has also prayed for compensation. According to us, in the facts and circumstances of the present case, no case whatsoever has been made out for payment of any compensation to the petitioner. This is not a case of any violation of fundamental rights by the State Agencies. Under the provision of Cr.P.C., the petitioner was placed under arrest and the petitioner has secured bail. At that time based on the material produced before the J.M.F.C., a condition was imposed that the petitioner should not travel abroad without leave of the Court. Even the petitioner made an application seeking leave, the same was granted subject to certain conditions. The petitioner was free to travel abroad. If he has not traveled in pursuance of the leave granted, it is for reasons attributable to him and not to any Agencies. Therefore, according to us, no case is made out for the award of any compensation.

18. Before we conclude, we will be failing in our duty if we do not make some observations regard the language used by the petitioner

in his pleadings before this Court. The petitioner was bent upon provoking not only of the respondents by making scurrilous allegations against them, but the petitioner did not spare even the judicial institutions. It was very obvious that the petitioner wanted to provoke not only the respondents but also the judicial institutions. However, since the issue of liberty was involved, we refrained from adverting to these baseless, scurrilous, and scandalous allegations intended to deliberately insult and provoke the Courts. We have now made it clear to the petitioner that if he persists with this conduct, we will be constrained not to entertain his petitions unless he make amends.

19. Mr. Sardana has expressed conditional regrets to this Court. Further, he has submitted that he will not express any regrets to the Court which dealt with his bail application. Again, there is no justification for this conduct of the petitioner. Ultimately, the Judicial Magistrate or the Judges of the Sessions Court may grant or refuse bail in the exercise of their judicial functions. Their orders may at times be right or not very right. But that by itself does not entitle any litigant to make personal allegations or scurrilous remarks against the Judges and thereafter even refuse to express any regret. If the orders are not correct or the party is not satisfied with the order, it is always open for such party to challenge such orders under law. However, making such scurrilous comments against the members of the judiciary is not acceptable and will not be accepted. Therefore, we make it clear that if this petitioner persists in making such allegations or comments, then,

there will be no obligation to consider his matters unless he agrees to make amends. For the present, we leave the matter at that.

20. The petitioner, in this case, has also made certain observations about the Constitution and the institutions established by the Constitution. According to us, these observations are regrettable and were made only to provoke the authorities. The only mature response that we can offer to such allegations is to refrain from being provoked by the same. However, we once again make it clear that if the petitioner persists in making such allegations or comments, then, we will have to seriously consider whether the petitions instituted by the petitioner are to be entertained only after the petitioner makes amends.

21. In this matter, we also appreciate the assistance rendered to us by Mr. Faldessai, learned Assistant Solicitor General of India. We must say that despite the provocations, he was fair not only to the Court but also to the petitioner.

22. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

SMT. M.S. JAWALKAR,J.

M.S. SONAK,J.

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MEENA
VISHAL
BHOIR

Digitally signed by
MEENA VISHAL
BHOIR
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