

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1821 OF 2021

Rajesh Kumar	...Petitioner
V/s.	
State of Maharashtra & Anr.	...Respondents

Mr. Sunny Punamiya a/w Ms. Kinnari Mehta for Petitioner.
Mr. Sooraj Hulke, APP for Respondent No.1 (State).

CORAM : A. S. GADKARI, J.
DATE : 28th APRIL, 2021.

P.C.:

1. By the present Petition the Petitioner seeks to quash and set aside the condition imposed upon him by an Order dated 5th November 2020, passed by the learned Metropolitan Magistrate 26th Court, Borivali, Mumbai, in C.C. No.2600769/N/2020. By the impugned Order, the trial Court has permitted the Petitioner to travel to the United States of America (for short "USA") by imposing condition of deposit of title deed of flat No.1301, 13th floor, "B" Wing in the building named as "Rustomjee Oriana" situated at Gandhi Nagar, MIG Colony, Bandra (East), Mumbai with Assistant Registrar of Metropolitan Magistrate Court of Borivali Center and on furnishing solvent surety of Rs.20,00,000/- or cash surety in the like amount in the Court. That the Petitioner shall return to India

on or before 10th December 2020 and inform to the concerned Police Station immediately.

2. Mr. Punamiya, learned counsel for the Petitioner invited my attention to the Order dated 15th April 2019, passed by the Hon'ble Supreme Court in the Special Leave Petition (Criminal) Diary No(s).5169 of 2019 filed by the Petitioner. He submitted that, by the said Order, Hon'ble Supreme Court had permitted Petitioner to travel to USA as the Petitioner is a citizen of USA and his wife who is stationed at USA is suffering from ailment of cancer. He submitted that, the Hon'ble Supreme Court had permitted the Petitioner to travel to USA subject to his depositing the title deed of Flat No.1301, 13th Floor, "B" Wing in the building known as "Rustomjee Oriana" situated at Gandhi Nagar, MIG Colony, Bandra (East), Mumbai owned by him, in the Registry of the Supreme Court as security and he was further directed to submit solvent surety to be given by Mr. Jitesh Gehnani for a sum of Rs.20,00,000/- in the said Court.

The learned counsel further submitted that, as a matter of fact, thereafter on four occasions, the Petitioner was permitted to travel to the USA with the same conditions as have been mentioned in Order dated 15th April 2019. He further on instructions submitted that, the Petitioner has scrupulously complied with the said conditions and has returned to India

on or before the stipulated date prescribed by the Hon'ble Court. He submitted that, as the documents of the said Flat No.1301 are already deposited in the Registry of Supreme Court, it is impossible for him to get the same from there in such a difficult period of pandemic and to submit it before the Trial Court. He, on instructions, further submitted that, the Petitioner has not collected the said documents from the Registry of the Supreme Court and the same are still in the custody of the Registry of the Supreme Court.

3. In view of the categorical statement made on instructions, by the learned counsel for the Petitioner, it appears to this Court that condition imposed upon the Petitioner by the impugned Order, of deposit of title deed of the said flat is an onerous condition and it is accordingly set aside.

As far as solvent surety of Rs.20,00,000/- or cash surety in the like amount is concerned, the Petitioner is permitted to furnish the same solvent surety to be given by Mr. Jitesh Gehnani for the said sum, as was directed by the Hon'ble Supreme Court, by its Order dated 15th April 2021. The said condition is accordingly modified.

It is to be further noted here that, by an Order of even date passed in Writ Petition No.1820 of 2021, this Court while allowing the said Petition, has permitted present Petitioner to furnish surety to be given by Mr. Jitesh Gahnani. In view thereof, the Petitioner again here need not

furnish separate surety for the said amount.

4. In view of the above, the Petitioner is permitted to travel USA for a period of six weeks. The period to start travel to USA by the Petitioner is extended by 7 days from the date of his furnishing the said solvent surety, before the Trial Court in Writ Petition No.1820 of 2021.

The impugned Order dated 5th November 2020, passed by the trial Court is accordingly modified to the above extent.

5. Petition is allowed, in the aforesaid terms.

(A. S. GADKARI, J.)