

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL I.A. NO. 1513 OF 2021
IN
CRIMINAL WRIT PETITION NO. 1584 OF 2019**

Sandra Cecilia D'Mello

....Applicant.

Vs.

The State Of Maharashtra & Anr.

....Respondents.

Ms. Mallika Ingale for the Applicant.

Mr. Amit Palkar, APP for the Respondent No.1-State.

Smt. Baptista Robert for Respondent No.2.

CORAM : A. S. GADKARI, J.**DATE : 28th JUNE, 2021.****(Through Video Conferencing)****P.C.:-**

This interim Application is preferred by the Applicant-Original Petitioner for extension of time to return to India.

By an Order dated 21st December, 2020, the Co-ordinate Bench of this Court has extended the period to return to India by the Applicant upto 30th June, 2021 on certain conditions.

2 The record indicates that, initially by an Order dated 9th September, 2019, the Applicant was permitted to travel to Australia from 12th September 2019 to 25th January, 2020, on certain conditions which have been more specifically mentioned in Para No.12 of the said Order. As

a matter of fact, the Applicant had returned to India within stipulated period, in compliance of the said Order.

3 By the subsequent Order dated 5th May, 2020 passed in LD/VC/OCR/19/2020 (To be numbered subsequently) (IA No.--/2020 IN Cri. WP No.1584/2019), the Applicant was allowed to travel to Australia and was directed to return to India within six months from the date the Applicant leaves India. In the said Order dated 5th May, 2020 also, certain conditions were imposed upon the Applicant. The said period to return to India was further extended by an Order dated 21st December, 2020 passed in I.A. (Stamp) No.6186 of 2020 and as per the said Order, the period to return to India has been extended upto 30th June, 2021.

4 The present Application is therefore, filed seeking further extension of time to return to India, predominantly on the ground that, due to COVID-19 pandemic, there is scarcity of International Flights and there are stringent restrictions on the international travel.

5 Learned counsel appearing for the Applicant, on instructions, submitted that, the Applicant is about 60 years old and is working for her livelihood as a cook in a creche at Australia.

On earlier occasion, during the course of arguments, Ms. Baptista, learned counsel appearing for the Respondent No.2 had raised apprehension about availability of the Applicant for the trial of CC No.1184/PW/2017 pending on the file of learned Metropolitan Magistrate,

22nd Court, Andheri, Mumbai and therefore, this Court directed the Applicant to file an additional Affidavit on record.

A scanned copy of the Affidavit-cum-Undertaking dated 19th June, 2021, duly affirmed before the Justice of the Peace, in and for the State of New South Wales Australia, is forwarded to this Court by the learned Advocate for the Applicant. The same is taken on record and marked 'X' for identification. In the said Affidavit, the Applicant has categorically stated that, she undertakes to return to India whenever the Trial Court will fix the said case for recording of her statement under Section 313 of the Code of Criminal Procedure (for short, *the Cr.PC.*). That, meanwhile she will work hard and earn in Australia and save for her flight which is currently exorbitant.

6 Ms. Ingale, learned counsel for the Applicant submitted that, till date, the Applicant has complied with all the conditions imposed upon her.

Ms. Baptista, learned counsel for the Respondent No.2 contradicts the said statement and submitted that, the husband of the Applicant has not complied with the directions issued by this Court by its Order dated 5th May, 2020 and in particular para No.9 (i) of the conditions i.e. filing of the undertaking before the learned Magistrate.

7 It is to be noted here that, in Order dated 21st December, 2020, passed in I.A.(STAMP) No.6186 Of 2020, in para No.9, the co-ordinate

Bench of this Court has observed that, in view of the various clauses (sic., 'conditions') passed in the earlier Order dated 5th May, 2020, the interest of the Respondent No.2-Complainant is well protected. That, the clause of condition (k) mentioned in Order dated 5th May, 2020, pertaining to the filing of affidavits/undertakings will continue to operate. In view thereof, the apprehension of the Respondent No.2 of non-filing of the affidavit-cum-undertaking by the husband of Applicant, needs no further clarification.

8 Taking into consideration, the present COVID-19 pandemic and the fact that, the Applicant is gainfully employed in Australia and is earning her livelihood, her presence till the stage of recording of her statement under Section 313 of the Cr.P.C. in the said case before the learned Metropolitan Magistrate is not required. As noted earlier, the Affidavit-cum-Undertaking dated 19th June, 2021 has also been filed by the Applicant in the present matter.

9 After taking into consideration various aspects of the present matter and the present COVID-19 pandemic, it would be appropriate to grant extension to the Applicant to return to India upto 30th June, 2022 on the following terms and conditions.

Hence the following Order:-

ORDER

- (a) The Applicant shall not dispute her identity before the Trial Court, where her case is pending;

- (b) The Applicant will not seek any adjournment in the matter pending before the Trial Court on account of her absence;

It is made clear that, in the absence of Applicant, her Advocate will attend the said case i.e. CC No.1184/PW/2017 pending on the file of learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai and will not seek adjournment unless precluded for medical grounds.

The learned Advocate for the Respondent No.2- Original Complainant, will not take objection for the continuation of trial in the absence of Applicant, till recording of her statement under Section 313 of Cr.PC.

- (c) Applicant shall send an email to the Indian Consulate, in Australia, every fortnight during the lock-down period, if any, informing the Indian Consulate of her whereabouts i.e. address and contact details, and in case there is no lock-down or movement restriction, the Applicant shall visit the Indian Consulate, once in a three months and keep them informed about her whereabouts;
- (d) The Applicant shall furnish her address in Australia as

well as her email and mobile numbers to the concerned Police Station, where she can be contacted during the said period or in the event, there is any change in the address or mobile numbers, by email;

(e) The Applicant shall return to India on completion of the aforesaid extended period or for recording of her statement under Section 313 of Cr.P.C., whichever is earlier;

(f) Original copy of the scanned copy of the Affidavit-cum-Undertaking dated 19th June, 2021, to be filed within six weeks from today, in the Registry of this Court;

10 Interim Application is disposed off, on the above terms.

(A.S. GADKARI, J.)