

Crl.M.P.No.7246 of 2020
in
H.C.P.No.1381 of 2020

P. N. PRAKASH , J.
and
V.SIVAGNANAM , J.

(Order of the Court was made by P.N.PRAKASH,J)

This criminal miscellaneous petition has been filed seeking to modify the condition passed by this Court *vide* order dated 19.08.2020 in H.C.P.No.1381 of 2020.

2. Prince Madhuran Cornelius (hereinafter will be referred to as “Prince” for brevity), was born to Indian parents, but, later became a citizen of the United Kingdom. The Central Crime Branch (CCB) registered a case in CCB Crime No.207 of 2019 for the offences under Sections 12(1)(b) and 12(2) of the Passports Act, 1967, r/w Sections 420, 468 and 471 IPC, arrested Prince and produced him for judicial custody on 28.06.2019. The said Prince was released on bail by the CCB and CB-CID Metropolitan Magistrate Court, Egmore, Chennai, in Crl.M.P.No.9760 of 2019 in CCB Crime No.207 of 2019 on 27.08.2019, under Section 167(2), on the ground that the police had failed to complete the investigation. The operative portion of the bail order reads as under:

“1.The petitioner/accused shall furnish two sureties for like sum of Rs.10,000/- to the satisfaction of this Court and one among the surety shall be a blood relative of the accused.

2.The petitioner/accused shall appear and sign before the respondent police daily at 10.00 a.m. and 5.00 p.m. until further orders.”

3. After the grant of bail, since Prince is a foreign national, he was detained under the Foreigners Act, 1946, by the State Government *vide* G.O.(ID).No.336 dated 19.07.2019 and was lodged in the Foreigners' Camp in Trichy.

4. Challenging the G.O.(ID).No.336 dated 19.07.2019, Jeyachandran, father of Prince filed H.C.P.No.2460 of 2019, which was dismissed by this Court on 04.06.2020.

5. Thereafter, a representation was given to the Collector for grant of permission for Prince to stay with his father in Coimbatore. While the representation was under consideration, Jeyachandran filed the present H.C.P.No.1381 of 2020 seeking permission for Prince to reside with him.

6. During the pendency of H.C.P.No.1381 of 2020, the District Collector passed an order dated 04.08.2020 rejecting the said request. This was

brought to the notice of this Court during the hearing of H.C.P.No.1381 of 2020. However, a Division Bench of this Court issued the following directions in H.C.P.No.1381 of 2020 on 19.08.2020:

“7.As the detenu wants to stay along with his father, there cannot be any prohibition for the authority to deny the same. Therefore, the rejection order is set aside and permission is granted to the petitioner's son viz., Mr.Prince Mathuram Cornelius (GBR Passport No.544819099) now confined at Special Camp for Foreigners, Central Prison Campus, Trichiraplli, to stay along with his father in his residence at No.R-28, Kovaipudur, Coimbatore 641 042, till the disposal of the trial and he shall not leave the premises without permission, at any point of time. The appropriate security arrangements shall be verified by the Police authorities. Though this Petition challenges the order passed in G.O.(ID).No.336 dated 19.07.2019, this Court, by molding the prayer, quashing the order passed by the District Collector, Trichirappalli, in Na.Ka.G.5/19670/2019, dated 04.08.2020 and grants the above relief. ”

7. On 09.09.2020, a Division Bench of this Court passed the following order:

“The matter is heard through video-conferencing.

2. It has been brought to the notice of this Court by the learned counsel for the petitionenr that already, the Government has permitted a person, who was lodged in Foreigners' Camp to reside with his close relative by virtue of a Government Order dated 20.09.2016 issued by the 1st respondent.

3. When such is the position, there should not be any problem for the 1st respondent to permit the son of the petitioner/detenu to live with the petitioner.

4. In case, no order is passed, this Court will be constrained to summon the respondents.

5.Post on 11.09.2020.”

8. On 11.09.2020, a Division Bench of this Court passed the following order:

“When the matter is called today, the learned Additional Public Prosecutor submitted that the Government has given instructions to the Commissioner of Police, Trichy and the District Collector, Trichy to implement the order of this Court dated 19.08.2020. Hence, the learned Counsel for the petitioner is directed to approach the said authorities for the purpose of carrying out certain formalities to allow the petitioner's son to live with his father.

2.Post the matter on 18.09.2020.”

9. On 18.09.2020, a Division Bench of this Court passed the following order:

“The learned Additional Public Prosecutor submitted that a letter has been returned by the petitioner stating that he does not want any police protection, as he is living in a rented premises. However, this Court is of the view that the petitioner cannot say that he does not want any police protection, when order has been passed by this Court.

2.With regard to the letter given by the petitioner to the police, the learned counsel for the petitioner seeks time to get instructions.

3.Call the matter on 23.09.2020.”

10. On 23.09.2020, a Division Bench of this Court passed the following order:

“The learned Counsel for the petitioner submitted that he is residing in the rented house and he will get appropriate permission from the landlord for installation of CCTV cameras if his son is permitted to live with him.

2.At his request, post the matter on 30.09.2020.”

11. While so, Jeyachandran has filed the present Crl.M.P.No.7246 of 2020 in H.C.P.No.1381 of 2020 seeking modification of the order dated 19.08.2020, on the ground that, he has shifted his house to Chennai at Door No.3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai – 41 and that instead of directing the stay of his son Prince in the house at No.R-18, Kovaipudur, Coimbatore – 641 042, the same could be modified to the effect that Prince may be permitted to stay with him in the aforesaid Chennai address.

12. The Additional Public Prosecutor submitted that the aforesaid order dated 19.08.2020 in H.C.P.No.1381 of 2020 was passed by the Division Bench of this Court on the strength of the order passed by the Supreme Court in S.L.P.(Crl).Diary No.11084 of 2020 dated 16.06.2020 in the case of Korean national, wherein, the Supreme Court has directed as under:

“Having heard learned counsel for the parties and considering that both the petitioners are South Korean nationals who are the General Manager (Finance)CEO and Managing Director of Chowel India Private Limited, respectively, we are of the view that the interest of justice requires that the petitioners be detained at the residential house which has been taken on lease by them viz.,804, Belchamp Hiranandani Park, Thriveni Nagar, Oragadam, Kanchipuram, Tamil Nadu, 603204.

The State may make all suitable arrangement for security which will be paid for fully by the petitioners.

The special leave petitions stand disposed of.”

13. On the strength of the aforesaid directions of the Supreme Court that security should be provided at the cost of the petitioner, the learned Additional Public Prosecutor insisted that similar orders may be passed by this Court.

14. In our considered opinion, the order of the Supreme Court dated 16.06.2020 does not lay down any law nor can it be cited as a precedent. If the State was aggrieved by the order dated 19.08.2020 in H.C.P.No.1381 of 2020 that was passed by a Division Bench of this Court granting relief to Prince, they should have taken the matter to the Supreme Court. This was not done by the State. In the modification application that has been filed by Jeyachandran, the State cannot seek implementation of the directions issued by the Supreme Court in another case. Now the short point is whether Jeyachandran has taken a house at Door No. 3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai – 41 and whether the earlier order dated 19.08.2020 in H.C.P.No.1381 of 2020 deserves to be modified *qua* the place of stay.

15. This Court called for a report from the police, pursuant to which, the Assistant Commissioner of Police, CCB, Chennai has filed a report dated 27.01.2020, wherein, he has stated as follows:

“4) It is humbly submitted that the petitioner requested to permit his son to stay with him at 3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai.

5) It is humbly submitted that the instruction of the Hon'ble High Court of Madras, visited the petitioner's present residence at 3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai.

6) It is humbly submitted that the house owner name is Tr.V.Palaniappan, M/a 51, S/o.Veerappan and he is not residing there and the petitioner and house owner made an tenancy agreement on 09.10.2020.

7) It is humbly submitted that the house having 1+2 floors and the petitioner is residing at ground floor and the petitioner's house having two gates (Front and Back). The house is with short walls and with grill gate which is not safe.

8) It is humbly submitted that the petitioner installed three CCTV cameras and two cameras facing front side and one camera is facing back side and CCTV recorder in his house only. It is submitted the house owner of the petitioner could be contacted. It is also said that he may come in near future.

9) It is humbly submitted that the petitioner's house located in very congested area and also Periyar salai is a market area.

10) It is humbly submitted that there is worship places are very near by the residence of the petitioner.

11) It is humbly submitted that a request letter was given to Tahsildar of Sholinganallur to ascertain the house details of petitioner and the Village Administrative Officer has given a letter about petitioner's house.”

16. Thus, the police report confirms that the petitioner has taken the house in Door No.3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai - 41, on rent.

17. In view of the above discussion, this criminal miscellaneous petition is allowed with the following directions:

- a) The order dated 19.08.2020 in H.C.P.No.1381 of 2020 is modified to the effect that, instead of permitting Prince to stay with his father Jeyachandran at No.R-28, Kovaipudur, Coimbatore 641 042, he is permitted to stay with his father Jeyachandran in Door No.3/112, Periyar Salai, M.K.Stalin Avenue, Pallavakkam, Chennai – 600 041;
- b) Prince shall report before the Inspector of Police, Fake Passport Team, Central Crime Branch, Chennai – 600 007, third respondent herein, everyday at 06.30 p.m.;
- c) He shall not move out of Chennai;
- d) If he involves himself in any other offence, a separate case can be registered against him and he can be remanded in custody; and
- e) It is made clear that this modification order should not be construed as if this Court has approved the directions issued in the order dated 19.08.2020 in H.C.P.No.1381 of 2020. Since the earlier Division Bench of this Court, has, by order dated 19.08.2020, exercised its discretionary power in a certain manner, this Division Bench does not want to go into the legality of it in this modification petition in order to maintain judicial discipline and comity.

(P.N.P.,J.) (V.S.G.,J.)
27.01.2021

nsd

To

1.The Joint Secretary to Government,
Public (SC) Department,
Secretariat, Chennai.

2.The District Collector-cum-Camp Officer,
Special Camp for Foreigners,
Central Prison Campus,
Tiruchirapalli.

3.The Inspector of Police,
Fake Passport Team,
Central Crime Branch,
Chennai – 600 007.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

P. N. PRAKASH , J.
and
V.SIVAGNANAM , J.

nsd

Crl.M.P.No.3516 of 2020
in Crl.A.No.383 of 2019

27.01.2021