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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.M.P.No.12828 of 2021
in
CrI.O.P.No. 9100 of 2020

Azmal Khan Bin Nagoor Mera
S/o.Nagore Mera
17, Jalan Kedah,
George Town 10050,
Pulau Finan,
Malaysia.

...Petitioner

Vs

1. State rep by
The Commissioner of Customs,
Air Customs,
Chennai - 1.

2. The Superintendent of Customs,
Prosecution Unit (A.I.R)
New Customs House,
Meenambakkam,
Chennai - 27.

3. The Foreign Regional Registration Officer,
Sastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai - 37.

...Respondents

Prayer :- This Miscellaneous Petition is filed under Section 482 of the Code of Criminal Procedure, praying to modify the order dated 29.07.2020 in CrI.O.P.No.9100 of 2020 on the file of this Court by allowing this petition.

For Petitioner : Mr.A. Ganesh
For R1 & R2 : Mr.P. Vishnu
Special Public Prosecutor for Customs
For R3 : Mr.B. Sudhir Kumar
Special Panel Counsel



ORDER

This Miscellaneous Petition has been filed under section 482 Criminal Procedure Code, seeking modification of the direction issued by this Court in Crl.O.P.No.9100 of 2020 dated 29.07.2020.

2. Heard, Mr.A. Ganesh, learned counsel appearing for the petitioner, Mr.P. Vishnu, learned Special Public Prosecutor appearing for the respondents 1 & 2 and Mr.B. Sudhir Kumar, learned Special Panel Counsel appearing for the third respondent.

3. The petitioner filed this petition for a direction directing the third respondent to accept on-line application seeking permission of the petitioner to travel Malaysia in Passport No.A35245905. This Court, by an order dated 29.07.2020, disposed of the petition for the following direction :

" In view of the above discussion, the 3rd respondent is directed to grant exit permit/clearance to the petitioner without asking for any No Objection Certificate from the 2nd respective to visit Malaysia by extending the period of visa for six months. Now representation of the petitioner dated 26.07.2020 in Application No.2503203S970U is pending on the file of the 3rd respondent. Therefore, the 3rd respondent is directed to pass orders as directed by the Court below within a period of two weeks from the date of receipt of a copy of this order. Further, it is also made clear that the permission granted by the learned Magistrate, that the petitioner has to return back to India on or before 28.03.2020 has got expired. Therefore, the petitioner is directed to return back to India within a period of 15 days from the date of his departure from India to Malaysia, failing which, the 2nd respondent is at liberty to take appropriate action as against the petitioner in accordance with law."

4. Even after a direction issued by this Court, the petitioner was unable to travel to Malaysia, since the World Wide Lockdown due to Covid-19 Pandemic. In the meanwhile, the petitioner approached the Malaysian Embassy to get Passport. He was issued Emergency Certificate of travel to Malaysia and the petitioner was directed to obtain fresh passport once again after landing in Malaysia. The Emergency Certificate is valid upto 30.06.2022. Thereafter, he approached the third respondent for Visa extension. However, the third respondent stated that the foreigner is holding a travel document on which Visa extension cannot be granted and in order to comply with



Court order the foreigner has to submit an application with valid passport.

5. It is seen that if the petitioner had landed at Malaysia, he can get regular passport in Malaysia. Therefore, the petitioner filed this petition for modification to the effect that a direction issued to the third respondent to grant Visa to leave the country to travel with the Emergency Travel Certificate issued by the Malaysian Embassy on 30.09.2021.

6. The third respondent filed a counter stating that, as a foreigner, the petitioner was holding a travel document instead of a valid passport and his visa could not be extended on a travel document. Subsequently, the petitioner uploaded a letter from the Malaysian High Commission mentioning that "As per passport regulations of Malaysia, a Malaysian Citizen holding an expired passport and visa staying overseas is not eligible for renewal of passport". Therefore, the petitioner was directed to upload confirmed flight ticket on 17.11.2021 stating "upload confirmed round trip flight tickets from India to Malaysia and back with a gap period of less than 15 days".

7. The learned counsel for the petitioner submitted that the petitioner has bought flight ticket to travel to Malaysia on 30.12.2021.

8. Considering the above, the third respondent is directed to grant exist permission/clearance to the petitioner to visit Malaysia by extending the Visa for 30 days, within a period of one week from the date of receipt of a copy of this order. However, the petitioner is directed to return back to India on or before 26.01.2022, since the hearing date is posted on 27.01.2022.

9. With the above direction, the order dated 29.07.2020 passed by this Court in CrI.O.P.No.9100 of 2020 is modified.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Commissioner of Customs,
Air Customs,
Chennai - 1.



2. The Superintendent of Customs,
Prosecution Unit (A.I.R)
New Customs House,
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Chennai - 27.

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3. The Foreign Regional Registration Officer,
Sastri Bhavan,
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Chennai - 37.

+1cc to Mr.B.Sudhi Kumar, Advocate, S.R.No.69456

+1cc to Mr.A.Ganesan, Advocate, S.R.No.69229

CrI.M.P.No.12828 of 2021
in

CrI.O.P.No. 9100 of 2020

KKV/23/12/2021