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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.25318 OF 2021

Majid Najimudeen

... Petitioner

Versus

1. The Deputy Commissioner of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
2. The Assistant Commissioner of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
3. The Inspector of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
4. The Regional Passport Officer,
Regional Passport Office,
Anna Salai,
Chennai-600 002.
5. The Senior Immigration Officer,
Bureau of Immigration (MHA),
Government of India,
Chennai Airport,
Chennai-600 025.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to issue a direction to the 1st respondent to withdraw the Look out Circular issued against the petitioner in connection with the FIR No.88 of 2021 on the file of the 3rd respondent.



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For Petitioner : Mr.S.Prabhakaran,
Senior Counsel for
Mr.MA.Gouthaman

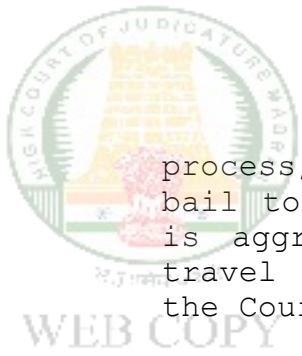
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the 1st respondent to withdraw the Look Out Circular issued against the petitioner in connection with F.I.R.No.88 of 2021, on the file of the 3rd respondent.

2.Since the petitioner/A2 is involved in Crime No.88 of 2021, for offence under Sections 384, 406, 420 and 506(i) of IPC, a Look Out Circular in Suspect No.from 2149218 to 2149218 has been opened by the Bureau of Immigration (Ministry of Home Affairs), Government of India on 18.11.2021 on the request of the 1st respondent in C.No.38/DC/CCB-III/camp/2021, dated 17.11.2021.

3.The learned Senior Counsel appearing on behalf of the petitioner submitted that on 01.11.2021, at about 05.30 p.m., when the petitioner along with two others returned to India, they were arrested by the 3rd respondent in connection with the above case and, produced for remand before the learned Judicial Magistrate No.I, Alandur. The learned Magistrate, by order, dated 01.11.2021 rejected the request for remand and granted bail to the petitioner and imposed certain conditions. The conditions No.4 is that '(iv)They shall not travel to any of the foreign country without the permission of the Court of law'. Based on which, the 1st respondent sent a communication to the Assistant Director/SIC, R.K.Puram, Sector-I, BOI Headquarters, East Block VIII, Sec-1, RK Puram, New Delhi-110 066 on 17.11.2021. On receipt of the same, on 18.11.2021, the Bureau of Immigration (Ministry of Home Affairs), Government of India had issued Look Out Circular against the petitioner in Suspect No.from 2149218 to 2149218. The learned Senior Counsel further submitted that a civil dispute (commercial transaction) has been given a criminal colour. While rejecting the remand of the petitioner, the learned Judicial Magistrate No.I, Alandur found that the issues between the parties is on the two memorandum of understanding, dated 30.04.2019 and 12.07.2019. Following the judgment of the Hon'ble Apex Court in the case of "Arnesh Kumar Versus State of Bihar and another reported in (2014) 8 SCC 273" and following the judgment of this Court in the case of "Nakkiran Gopal" that the remand should not be a mechanical



process, the learned Magistrate rejected the remand and granted bail to the petitioner with certain conditions. The petitioner is aggrieved on the condition that the petitioner shall not travel to any of the foreign country without the permission of the Court of Law.

4.The learned Senior Counsel further submitted that earlier, when the notice under Section 41(A) Cr.P.C., was served to the petitioner, the petitioner appeared before the 3rd respondent Police for enquiry and cooperated with the investigation. When the second notice was attempted to be served to the petitioner, he was not available and his mobile number was switched off. During that time, the petitioner had gone abroad to attend his family function, that is the reason, he was unable to appear for enquiry and inform the 3rd respondent.

5.The learned Senior Counsel further submitted that the Hon'ble Apex Court in catena of judgments following the case of "Menaka Gandhi Versus Union of India reported in AIR 1978 SC 597" consistently held that it is a constitutional right of a person to travel abroad and no one should be deprived of his life and liberty except the procedure established in law. This Court in the case of "E.V.Perumalsamy Reddy and others Versus State represented by the Deputy Commissioner of Police reported in 2014 (1) MLJ 125" and in the case of "S.Martin Versus the Deputy Commissioner of Police, Central Crime Branch reported in 2014 (1) MLJ 647" following the Hon'ble Apex Court Judgment held that once a person is granted bail, no question of sustaining Look Out Circular would arise, unless the person is involved in any heinous crimes and Terrorist Act. In this case, the petitioner is involved only in a case of commercial dispute based on the two memorandum of understanding. This being the case, the 1st respondent ought not to have sent requisition to the Immigration Authorities for issuing Look Out Circular against the petitioner. The Bureau of Immigration, in a routine manner, on the request of the investigation agency, in the rank of Superintendent of Police, Deputy Commissioner of Police, issuing the Look Out Circular without considering the facts and circumstances of the case. The petitioner is aggrieved with the condition No.4 of the learned Judicial Magistrate No.I, Alandur and hence, he filed this petition to modify the condition and as well to cancel the Look Out Circular issued against him without any reason. Further reiterated that after arrest of a person, there is no question of continuation of the Look Out Circular. The Hon'ble Apex Court and this Court consistently held that merely because a person is involved in a criminal case, he is not denude of his fundamental rights. It is the fundamental right of a person to move anywhere he likes including foreign countries.



6.The learned Senior Counsel further submitted that the petitioner is a philanthropist and helps needy and poor people. The petitioner produced the Air Ticket of his departure, arrival and he is leaving from Chennai to Dubai on 28.12.2021 and from Dubai to Los Angeles on 31.12.2021 and he planned to return back to Chennai on 30.01.2022. He further submitted that the petitioner is a Senior Citizen, his daughter is an American citizen and his grandson Abdul Rahman (aged about 2 years) is also an American citizen born in California, who is now with the petitioner. The petitioner has to take his grandson to USA. The petitioner is granted Multi Point USA visa valid from 15.02.2019 to 12.02.2029. Further, the petitioner has business dealings in abroad and hence, he needs to travel. Each time the petitioner getting permission from the learned Judicial Magistrate No.I, Alandur would be arduous task at times he needed to undertake sudden and immediate travel. The petitioner is a permanent resident and is having deep social roots. The petitioner shall inform the 3rd respondent about his travel and contact details and place of stay and shall appear for enquiry whenever needed and not be a reason for the delay.

7.The learned Senior Counsel submitted that the petitioner is voluntarily willing to donate a sum of Rs.2,00,000/- (Rupees two lakhs only) to the Madras Advocate Cooperative Society Limited, Madras for the welfare of its members. Hence, he prayed for withdrawal of the Look Out Circular issued against him by the Immigration Authorities.

8.The learned Additional Public Prosecutor appearing for the respondents submitted that the petitioner along with two others arrested in Crime No.88 of 2021 on 01.11.2021 and produced for remand by the 3rd respondent before the learned Judicial Magistrate No.I, Alandur. The learned Magistrate refused to accept the remand and granted bail to the petitioner. One of the condition is that the petitioner not to travel abroad without permission of the Court. Earlier, the petitioner has partaken the enquiry conducted by the 3rd respondent in Crime No.88 of 2021. Thereafter, without informing the 3rd respondent, the petitioner left India and he was unable to be contacted. Finding that the petitioner had absconded, a watch was kept over him. When the petitioner entered India, he was arrested and produced for remand before the learned Judicial Magistrate No.I, Alandur. The petitioner is a frequent traveller, travelling to various countries for business purpose. The petitioner has also got Multi Point Entry Visa for USA. If the travel restrictions of the petitioner is removed, he would flee away from the country and the investigation would not progress. The condition of the learned Judicial Magistrate No.I, Alandur is that the petitioner to inform the Court before going to foreign



countries. Without approaching the learned Magistrate, now he has filed this present petition.

9. This Court considered the rival submissions and perused the materials available on record.

10. A Look Out Circular in Suspect No. from 2149218 to 2149218 was opened by the Bureau of Immigration (Ministry of Home Affairs), Government of India on 18.11.2021 on the request of the 1st respondent in C.No.38/DC/CCB-III/CAMP/2021, dated 17.11.2021, since the petitioner is involved in Crime No.88 of 2021, on the file of the 3rd respondent. The remand of the petitioner was not accepted by the learned Judicial Magistrate No.I, Alandur considering the nature of offence and bail was granted. One of the condition imposed by the learned Magistrate is that the petitioner to get permission from the Court to travel foreign countries. Taking cue from the same, the 1st respondent had written to Bureau of Immigration to open a Look Out Circular and impose travel restrictions on the petitioner, which is uncalled for.

11. In view of the same, continuation of the Look Out Circular issued against the petitioner in Suspect No. from 2149218 to 2149218 by the Bureau of Immigration (Ministry of Home Affairs), Government of India on 18.11.2021 is hereby quashed.

12. The petitioner (Old Passport No.Z3771720 and presently holding new Passport No.Z6242748) is free to travel without any restriction. The petitioner to inform the 3rd respondent about his travel details such as date of departure and arrival, place of stay and his contact details like mobile number and email address and the same to be furnished by way of memo to the learned Judicial Magistrate No.I, Alandur.

13. With the above directions, this Criminal Original Petition is allowed. The petitioner to denote a sum of Rs.2,00,000/- (Rupees two lakhs only) to the credit of the Madras Advocate Cooperative Society Limited, Madras in Account No.484022647, Indian Bank, Madras High Court Branch, Madras.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vv2



To

1. The Deputy Commissioner of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
2. The Assistant Commissioner of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
3. The Inspector of Police,
CCB, ALGSC-II,
Chennai Commissioner Office,
Vepery, Chennai.
4. The Regional Passport Officer,
Regional Passport Office,
Anna Salai,
Chennai-600 002.
5. The Senior Immigration Officer,
Bureau of Immigration (MHA),
Government of India,
Chennai Airport,
Chennai-600 025.
6. The Public Prosecutor,
High Court, Madras.

Copy To:

1. The Judicial Magistrate Court No.I,
Alandur.
2. The Secretary,
Madras Advocate Cooperative Society Limited,
Madras.

+2ccs to M/s.MA.Gouthaman, Advocate, S.R.No.69468

CRL.O.P.No.25318 of 2021

VSN-II (CO)
RLP (27/12/2021)