

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.3331 OF 2021

ORDER:

Heard learned counsel for the petitioner and Sri Anil Prasad Tiwari, learned Special Public Prosecutor for respondent.

2. The petitioner herein filed the present petition to direct the learned Special Judge for Economic offences, Hyderabad to give custody of the passport/direct the said judge to pass speaking orders after following principles of natural justice.

3. The petitioner herein is accused in F.No.DRI/HZU/48D/ENQ-26 (INT-NIL)/2019. The offence alleged against the petitioner herein is under Section - 135 of the Customs Act, 1962. The allegation against the petitioner herein is that she was involved in smuggling of gold weighing 11.100 kilograms valued at Rs.3,63,52,500/- into India from Dubai by concealing the said gold on her body. The Directorate of Revenue Intelligence (D.R.I) officials have seized the gold and arrested the petitioner and she was produced before the Court below on 28.05.2019.

4. The petitioner has filed an application under Section 439 Cr.P.C. seeking regular bail and the Special Judge for Economic Offences vide order dated 14.06.2019 granted bail to the petitioner on imposing certain conditions that she has to execute a personal bond for Rs.5.00 lakhs with two sureties for the like sum to the satisfaction of the Court. From the two sureties, one surety must be local and other a relative of the petitioner. She is directed to appear before the complainant once in a week i.e. on every Monday between 10.00 am and 5.00 pm until further orders. She is also

directed to cooperate with the investigating officer in further investigation and pursuant to the said order she has to surrender her passport.

5. The petitioner has filed a petition under Section 451 Cr.P.C. seeking interim custody of her passport for a period of six months. The Court below vide order dated 18.02.2020 dismissed the said application on the ground that the petitioner has not approached the Court below with clean hands and she has suppressed the material facts. It is relevant to mention that the petitioner has not challenged the said order dated 18.02.2020 passed by the learned Special Judge for Economic Offences, Hyderabad and it attained finality.

6. It is also relevant to note that the D.R.I officials after completion of investigation laid charge sheet against the petitioner for the aforesaid offences and the same was taken on file vide C.C.No.14 of 2020. The petitioner has filed another application under Section 439 (1)(b) of Cr.P.C. for interim custody of passport for a period of three months from 25.03.2021 to 25.6.2021. The Court below dismissed the petition with an endorsement "How this petition under Section 439(1)(b) Cr.P.C. for return of passport to be explained. Hence returned."

7. The petitioner in the present petition contended that the Court below dismissed the said application filed by her without being heard. She has filed original of said Criminal Miscellaneous Petition SR.No.424/2021 returned with the above said endorsement by the Court below. According to learned counsel for the petitioner, the Court below without hearing the petitioner,

dismissed the said petition. The Court below ought to have heard the petitioner and passed a reasoned order in CrI.MP.No.SR 424/2021 filed under Section 439 (1)(b) Cr.P.C. Thus the Court below erred in returning the said petition. There is violation of principles of natural justice. She has also contended that she has to go to Dubai for the purpose of taking treatment to her eye. She is partner in 'Jewel Coast' which designs and manufactures jewellery. She needs to travel Dubai to conduct business, so as to show the designs to prospective customers. Therefore, the petitioner is in need of said passport. With the said contentions, learned counsel for the petitioner seeks to relax the bail conditions imposed by the Court below vide order dated 14.06.2019 in CrI.MP.No.188 of 2019.

8. The respondent-D.R.I filed counter opposing the said petition. The petitioner is a habitual offender. Even in the past, she had also smuggled 34 kgs of gold in similar fashion. She is filing one petition or other with different grounds. In the earlier petition, she sought custody of the passport on the ground that she has to take her daughter to United Kingdom to join LLB course. In the CrI.MP SR No.424 of 2021, she is seeking interim custody of passport on the ground that she has to travel to Dubai for the purpose of conducting business in jewellery. Thus the petitioner is trying to get her passport on one pretext or other by hook or crook. Now she came up with new ground that she is suffering with BECHET disease since 2015 and she has to take treatment in Dubai. Therefore, the petitioner is trying to jump on bail. C.C.No.14 of 2020 is pending before the Court below, where the petitioner is an accused for the offence under Section 135 of

the Customs Act, 1962. With the said grounds, respondent prayed to dismiss the present petition.

9. The above stated facts would reveal that the petitioner herein is an accused in C.C.No.14 of 2020 for the offence under Section 135 of the Customs Act. (Arising out of F.No.DRI/HZU/48D/ENQ-26 (INT-NIL)/2019). The application filed by the petitioner seeking regular bail was allowed on certain conditions including the condition that she has to surrender her passport. Accordingly, she has surrendered her passport. She has filed application under Section 451 Cr.P.C. seeking interim custody of her passport for a period of six months. Said petition was dismissed by the Court below vide order dated 18.02.2020. She has not filed any application before this Court challenging the said order. Thus, the said order attained finality. The petitioner has filed Criminal Petition No.1995 of 2020 under Section 482 Cr.P.C. seeking to order for return of her passport forthwith by setting aside the order passed by learned Special Judge for Economic Offences, Hyderabad in CrI.M.P.No.15 of 2020 in CrI.MP.No.145 of 2019, dated 18.02.2020 and she has withdrawn the said petition on 25.01.2021. Thereafter, the petitioner herein has filed CrI.MP SR.No.424/2021 on 16.03.2021 seeking interim custody of the passport for a period of three months. The Court below returned the said petition with an endorsement that how the said petition is maintainable under Section 439 (1) (b) Cr.P.C. for return of passport. The petitioner herein did not mention in the present criminal petition that she has resubmitted the said petition by explaining with regard to maintainability of said petition under Section 439 (1) (b) Cr.P.C. The petitioner has filed original of said

returned petition, which also shows that she has not resubmitted the said petition with proper explanation before the Court below.

10. A perusal of the record also would reveal that the petitioner has filed CrI.MP.No.108 of 2021 in C.C.No.14 of 2020 seeking the following reliefs:

- a) waive the condition to appear before the Complainant on every Monday between 10 AM to 5 PM;
- b) Grant interim custody of the passport bearing No.T4783001 to the petitioner for a period of three months from the date of the order;

The petitioner herein has filed the said petition on the ground that she is suffering with BECHET disease since 2015 and she has to take treatment in Dubai and she has also stated that she is partner of “Jewel Coast” which designs and manufactures jewellery. She has to travel to Dubai for the purpose of conducting her business to show the designs to prospective customers etc., The Court below vide order dated 19.04.2021 allowed the said petition and condition imposed on the petitioner to attend before the respondent authorities on every Monday till further orders was relaxed. The Court below granted relaxation of the said condition on the ground that the respondent-authorities have completed the investigation, filed charge sheet and the same was taken on file vide CC.No.14 of 2020. The Court below did not grant the relief of giving interim custody of the passport in the said order. CrI.MP.No.108 of 2021 (Computer number) and CrI.MP.No.228 of 2021 (Registered number) was filed on 24.03.2021, which was allowed by the Court below on 19.04.2021. The petitioner herein has not filed any petition challenging the said order dated

19.04.2021. She has filed a fresh petition under Section 439 (1) (b) Cr.P.C. on 16.03.2021, which was returned by the Court below on 23.03.2021 on the ground of maintainability.

11. Learned counsel for the petitioner by referring to principle laid down by the Hon'ble Apex Court in **Mohan Lal Magan Lal Thacker v. State of Gujarat**¹ and **Abdul Gaffur Khan v.State of Telangana**² and order dated 26.03.2021 of this Court in Crl.R.C.No.93 of 2021 would submit that the petition under Section 439(1)(b) Cr.P.C. is maintainable and revision is not maintainable since it is an interlocutory order.

12. The petitioner has filed memo vide USR No.26686/2021 dated stating that she has filed Crl.MP.No.108 of 2021 under Section 439(1)(b) Cr.P.C. seeking two reliefs i.e. (i) to relax condition to appear before the Complainant and (ii) to grant interim custody of passport. The said petition was sent for check and put up and petitioner was asked to strike off the prayer with respect to interim custody of passport. It is also stated that the Court below was ready to hear the petitioner only with respect to appearance before DRI/complainant. The Court below is of the firm opinion that revision is maintainable against order dated 18.02.2020 in Crl.MP.No.145 of 2019. Though the petitioner submitted orally that revision is not maintainable as the order dated 18.02.2020 is an interlocutory order during hearing of Crl.MP.No.67 of 2021 and during mentioning with respect to returned Crl.MP.No.SRNo.424/2021, the Court below did not consider the submissions. The Court below passed order dated

¹. AIR 1968 SC 733

². 2015 (1) ALT (Crl) 91 (AP)

19.04.2021 in CrI.MP.No.108 of 2021 relaxing the condition of petitioner's appearance before the DRI/Complainant only. Thus, the petitioner has exhausted all the remedies before the Court below.

13. A perusal of the order dated 19.04.2021 in CrI.MP.No.108 of 2021 would reveal that the Court below specifically mentioned that said petition is filed by the petitioner/accused under Section 439(1)(b) Cr.P.C praying the Court to relax the condition imposed on her to attend before the respondent/complainant on every Monday vide order dated 14.06.2019 in CrI.MP.No.188 of 2019. Thus, there is no mention about relief sought by the petitioner seeking interim custody of passport. The earlier petition filed by the petitioner vide CrI.MP.No.15 of 2020 seeking interim custody of the passport for a period of six months was dismissed by the Court below vide order dated 18.02.2020. The petitioner has filed said petition at crime stage and the same was dismissed by the Court below on 18.02.2020 on the ground that she has filed said petition with suppression of facts and she has not approached the Court with clean hands. Now the respondent-D.R.I. officials have completed the investigation and laid charge sheet against the petitioner for the offence under Section 135 of the Customs Act, 1962 and the same was taken on file vide C.C.No.14 of 2020. Therefore, as discussed supra, in CrI.MP.No.108 of 2021 filed by the petitioner under Section 439(1)(b) of Cr.P.C. she has restricted her relief only to the extent of relaxation of condition to appear before the respondent-authorities on every Monday in compliance of the order dated 14.06.2019 in CrI.MP.No.188 of 2019. Thus, she has not filed any application seeking interim custody of the

passport after filing of charge sheet in C.C.No.14 of 2020. At the cost of repetition, it is relevant to note that after filing of charge sheet and after taking cognizance of the same in C.C.No.14 of 2020 the petitioner has filed CrI.MP.No.108 of 2021 seeking relaxation of condition to appear before the respondent.

14. Now the petitioner herein has filed petition vide CrI.MP.SR No.424/2021 on 16.03.2021 in CC.No.14 of 2020 seeking interim custody of passport for a period of three months from 25.03.2021 to 25.06.2021. The said petition was returned by the Court below with regard to its maintainability.

15. Section 439 (1) (b) Cr.P.C. deals with special powers of High Court or Court of Session regarding bail and that any condition imposed by a Magistrate when releasing a person on bail be set aside or modified. As stated above, the respondent-authorities have completed the investigation and filed charge sheet and the same was taken on file vide C.C.No.14 of 2020. In view of the fact that the respondent has already filed charge sheet and the same is taken on file vide C.C.No.14 of 2020, only remedy available to the petitioner is to file application under Section 451 Cr.P.C. in the said C.C. seeking interim custody of her passport before the Court below. It is relevant to note that the petitioner has not filed any application under Section 451 Cr.P.C. seeking interim custody of her passport after filing of charge sheet in C.C.No.14 of 2020. She has filed the said application under Section 451 Cr.P.C. vide CrI.MP.No.15 of 2020 at crime stage. Therefore, the Court below has rightly returned the application filed by the petitioner vide CrI.MP.SR.No.424/2021 on 23.03.2021 on the ground of

maintainability. Therefore, there is no error in the said order passed by the Court below. As stated above, the only recourse left to the petitioner in accordance with law is to file an application under Section 451 Cr.P.C. in C.C.No.14 of 2020 seeking interim custody of her passport.

16. Granting liberty to the petitioner to file application under Section 451 Cr.P.C. before the Court below, this Criminal Petition is dismissed. As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

K. LAKSHMAN, J

Date:01.06.2021
Nvl