

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1353 OF 2018

DILIP S/O NANA LOKE
VERSUS
STATE OF MAHARASHTRA

.....

Advocate for Petitioner : Ms. S. A. Kothari h/f Mr. S. G. Ladda
APP for Respondent-State : Mr. B. V. Virdhe
Advocate for Assist to APP : Mr. N. S. Ghanekar

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**WITH
CRIMINAL APPLICATION NO.164 OF 2019
IN WP/1353/2018**

VIHAR S/O VINAYAKRAO RAKHUNDE
VERSUS
THE STATE OF MAHARASHTR AND ANOTHER

.....

Advocate for Applicant : Mr. N. S. Ghanekar
APP for Respondent No.1-State : Mr. B. V. Virdhe
Advocate for Respondent No.2 : Ms. S. A. Kothari h/f Mr. S. G. Ladda

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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 29-06-2022**

ORDER :

1. Criminal Application No.164 of 2019 has been filed for assist to learned APP. Said application stands allowed and disposed of.
2. The writ petition has been filed by the original accused invoking the Constitutional powers of this Court under Article 226 and 227 of

the Constitution of India to challenge the order dated 17-07-2018 passed by learned Judicial Magistrate First Class, Aurangabad in Criminal M.A. No.1295 of 2018 and Judgment dated 14-09-2018 passed in Criminal Revision Petition No.230 of 2018 passed by learned Additional Sessions Judge, Aurangabad, to quash and set aside those orders and passport of the petitioner be returned to him to enable him to resume his duty in Turkey.

3. Heard learned Advocate Ms. S. A. Kothari holding for Mr. S. G. Ladda, learned APP Mr. B. V. Virdhe well assisted by learned Advocate Mr. N. S. Ghanekar.

4. It has been submitted on behalf of the petitioner who is shown as original accused No.1 in Crime No.620 of 2017 registered with Police Station MIDC Waluj, Aurangabad dated 07-12-2017 which has been filed under Section 408 r.w.34 of IPC and Section 66(B), 66(D), 66(E), 72, 72(A) of the Information Technology Act.

5. Criminal Misc. Appln. No.1295 of 2018 was filed by the present petitioner before learned Judicial Magistrate First Class seeking permission to travel abroad and release of passport which was seized in the matter. It was submitted that after his arrest the

petitioner had moved bail application under Section 437 of Cr.PC.. and the learned Magistrate while passing order on his bail application on 28-05-2018 had put a condition that he would furnish his passport before the Investigating Officer. It was then stated that the petitioner was in search of job and could secure it as a Quality Manager in ASYA (SANAYI BOYALARI VE YARDIMCI URUNLER TOPTAN PAZARLAMA) Company which is situated at Ostim Mah. Alinteri Bulvari 1124/2 Sokak No.2. According to him, his passport was seized by the police which is illegal act, and therefore, he sought that it should be given back to him and he be put at liberty to travel Turkey to resume his job. That order came to be rejected by the concerned Magistrate on 17-07-2018. Thereafter, the said order was challenged by the petitioner in Criminal Revision Application No.230 of 2018 and after hearing both the sides, revision came to dismissed by the learned Additional Sessions Judge-4, Aurangabad on 14-09-2018.

6. The learned Advocate appearing for the petitioner submits that the validity of the passport has now come to an end and he want the custody of the passport to renew it and also want to travel abroad. The police could not have seized the said passport nor any condition

could have been imposed for submission of passport by him to the police authorities. It is also to be noted that now the charge-sheet has been filed, but in the said charge-sheet only the present petitioner has been shown as arrested. The two co-accused have been shown as absconding. Under such circumstances, the matter will not proceed. Question would then lie as to for how many days he can be deprived of his rights. His Constitutional rights are being affected, and therefore, the petition deserves to be allowed.

7. Per contra, the learned APP Mr. B. V. Virdhe well assisted by learned Advocate Mr. N. S. Ghanekar strongly opposed the application and submits that now the petitioner has lost his job in Turkey, and therefore, there is no question of his resumption with the same company. The accused also could be arrested in view of the look out notice that was issued against him. The passport of the petitioner was seized by the immigration department itself but then they have handed over the passport to the police. While releasing the petitioner on bail, learned Judicial Magistrate First Class had imposed the condition that he should submit his passport to the police authorities. Now the said passport is with the Court of Magistrate. The co-accused of the petitioner are still absconding

though look out notice has been issued as against them also. The trial has been separated and certain witnesses have been examined before the Magistrate. It is not the case that the trial would be stayed indefinitely. In fact, the present petitioner and original accused No.2 Suresh Haribhau Kulkarni had approached this Court by filing Criminal Writ Petition No.254 of 2018 and 821 of 2018 for quashing the FIR, however, the Division Bench of this Court dismissed the writ petition on 02-08-2018, and therefore, the matter will have to proceed further. By order dated 06-01-2022 witness summons has also been issued, and therefore, there is no merit in the present writ petition, it deserves to be dismissed.

8. It is to be noted that though the FIR appears to have been filed on 07-12-2017 the present petitioner came to be arrested only on 20-05-2018. It is stated that it was due to the lookout notice that was issued. It is stated that at the immigration center itself his passport was seized by the immigration authorities. It appears that seized here appears to be in the form that it was taken in possession and then this authorities have handed over it to the police, but then the arrest of the petitioner appears to be not so easy. According to him, he was serving in Turkey at that time. The details as to when

he went to Turkey are not made available here. When the petitioner/applicant filed the application for bail under Section 437 of Cr.P.C., the learned Magistrate had specifically imposed the said condition that he should submit his passport before the police authorities. The petitioner had never challenged that condition nor got it modified at any point of time immediately after his release. That order of releasing him on bail was passed on 28-05-2018 and then the petitioner/applicant filed the separate application i.e. Cri.M.A.No.1295 of 2018 on 25-06-2018. That application was with two prayers, one was to direct the police authorities to release his passport, and another was that he be permitted to travel abroad and definitely that was in a view to resume his job. However, now the statement has been made on behalf of the petitioner that now he has lost the job, therefore, question and flying to Turkey does not arise at all. The imposition that condition by the learned Magistrate appears to be with a background with lookout notice was stated to have been issued against the petitioner also. Therefore, by imposing necessary conditions if the learned Magistrate ensures that the accused would remain present before the Court at the later stages of trial, then it cannot be said that the terms were harsh or unjustified. Therefore, there is no question of invoking the

Constitutional powers of this Court in favour of such accused who was absconding.

9. Taking into consideration the fact that now there appears to be progress in the trial, the appellant can seek the trial even day to day basis and after completing the trial depending upon the result, may revive his prayer for return of passport. Hence, writ petition stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.