

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4973 OF 2021

Union of India through Deputy Commissioner
of Customs

Petitioner

versus

Shigeru Hikawa and another

Respondents

Mrs.Anuradha A. Mane, Advocate for Petitioner.

Mr.A.M.Sachwani with R.r.Shah, Advocates for Respondent no.1.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th July 2022

PC :

1. Petitioner has challenged the order dated 10th August 2021 passed by learned Additional Sessions Judge in Criminal Revision Application No.162 of 2020 and order dated 20th January 2020 passed by learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai below Exhibit-1 in C.C No.77/MISC/2020.

2. Respondent no.1 was apprehended in case registered under Sections 135(1)(a), 135(1)(b) and 135(1)(i) of Customs Act, 1962. The prosecution case is that on 24th July 2019 on the basis of intelligence, Air Intelligence Unit (AIU) at Chhatrapati Shivaji Maharaj Airport, Mumbai, intercepted passenger Mrs.Marine Kataigi, a Japanese National who was about to depart to Bangkok. On search 1,80,000 US Dollars were found concealed in her bag. During her questioning she disclosed name of Respondent no.1 as the person

instrumental in selling pure gold and accept US Dollars and smuggling the proceeds to foreign states. Respondent no.1 was arrested on 25th July 2019. He was produced before the Court of learned Metropolitan Magistrate and released on bail on certain conditions including not to leave the country without permission of Court.

3. Respondent no.1 preferred an application before learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai, seeking permission to travel abroad for one month. Learned Magistrate vide order dated 20th January 2020 allowed the said application and permitted Respondent no.1 to travel to Japan for a period of one month from 20th January 2020 on certain conditions.

4. Order dated 20th January 2020 was challenged by Petitioner by preferring Criminal Revision Application No.162 of 2020 before Sessions Court for Greater Bombay. Vide order dated 10th August 2021 passed by learned Additional Sessions Judge, Greater Bombay, the Revision Application was rejected.

5. The Petitioner is aggrieved by both the aforesaid orders and preferred this petition under Article 227 of Constitution of India and Section 482 of Cr.PC.

6. Learned Advocate for Petitioner submitted that both the orders are contrary to law. Respondent no.1 is foreigner. Personal penalty of Rs.30 lakh is pending against him. In the event he is permitted to travel abroad, he would not turn up to face trial and other proceedings. Respondent no1 is involved in economic offence. There

is communication dated 25th August 1993 issued by Government of India which provides that citizens against whom criminal cases are pending, can travel abroad subject to production of order from Court. Respondent no.1 is foreigner and case is pending against him. Reliance is placed on the decision of this Court in the case of **Deepak Dwarkasingh Chhabria Vs. Union of India and another**¹ and order passed in the case between **Union of India Vs. Carsten Lund and another**².

7. This petition has been pending in this Court from September-2021. Learned Magistrate has allowed application of Respondent no.1 vide order dated 20th January 2020. Said order was confirmed by Sessions Court by order dated 10th August 2020. The impugned orders were not stayed by this Court. Due to efflux of time respondent no.1 filed an affidavit dated 24th June 2022 stating that he was supposed to go to Japan on 20th January 2020 for a period of one month, and due to pendency of revision application and this petition he could not travel abroad. He proposes to travel to Japan from 15th July 2022 for a period of one month.

8. Learned Advocate for Respondent no.1 submitted that although Respondent no.1 was permitted to travel abroad by order dated 20th January 2020, his passport was not returned to him. The order dated 20th January 2020 was not stayed by Sessions Court or this Court. No attempt was made by Petitioner to move the petition seeking stay to the orders under challenge. Nothing was recovered from him. Respondent no.1 was arrested on the retracted statement of co-accused. Learned Magistrate has granted permission to

1 1996 (2)-Mh.L.J.-877

2 Criminal Application (APL) No.764 of 2014, dated 17-9-2014

Respondent no.1 on certain conditions. He was arrested on 25th July 2019 and more than 2½ years have passed after the date of arrest. Adjudication proceedings were completed and penalty of Rs.30 lakh has been imposed on Respondent no.1 in the adjudication order dated 11th January 2021. The said order is appealable. Respondent no.1 has filed appeal u/s.291 of Customs Act, 1962 against adjudication order. In accordance with Section 129(E) of the Customs Act, Respondent no.1 has deposited Rs.2.25 lakh in the Customs Department on 23rd February 2021.

9. Accused no.1 was apprehended by AIU on 24th July 2019. She was found in possession of 1,80,000 US Dollars. On the basis of her statement which was purportedly retracted, subsequently Respondent no.1 was arrested on 25th July 2019. Petitioner had preferred application before learned Magistrate seeking permission to travel abroad. The said application was allowed by order dated 20th January 2020. While allowing said application it was observed that there is communication dated 25th August 1993 issued by Government of India which provides that citizens against whom criminal cases are pending, can travel abroad after obtaining orders from Court. In the case of Deepak Dwarkasingh Chhabria Vs. Union of India and another (supra), it is held that application for passport is not liable to be refused on the ground of pendency of criminal case, if person obtains permission from the concerned criminal Court for travelling outside India. Respondent no.1 was permitted to travel abroad for a period of one month from 20th January 2020 on certain conditions. Respondent no.1 was directed to furnish additional Cash security of Rs.1 lakh and provide details, schedule of his tour of Japan, detailed address and contact number during his travel abroad.

He was also directed to furnish two references along with their consent to the Department who can be contacted in his absence and he shall give an undertaking that he shall not extend period of stay at abroad. The AIU Department was directed to hand over passport to Respondent no.1. He was directed to report Department immediately after his returning from Japan and redeposit the passport with Department. He was directed to give undertaking that his Advocate will represent him in adjudication proceedings. The Petitioner challenged said order by preferring Revision Application before Sessions Court. By order dated 10th August 2020, the revision application was rejected on the ground that Respondent no.1 has been directed by the Court of Magistrate to travel abroad for a period of one month only. The Court has directed the Respondent no.1 to give additional security with stringent conditions enumerated in the order. On scrutiny of the order it does not appear that there is any illegality or impropriety.

10. Learned counsel for Respondent no.1 had made a grievance that in spite of order dated 20th January 2020, the Petitioner did not return the passport to Respondent no.1. The impugned order dated 20th January 2020 or the order dated 10th August 2020 was not stayed by the Court. Respondent no.1 is being harassed by Petitioner authorities.

11. It is apparent that Respondent no.1 was apprehended at the statement of co-accused. Sufficient security was directed to be given by Respondent no.1. The impugned order dated 20th January 2020 and 10th August 2022 were passed by assigning reasons. No case is made out to interfere in the said orders. The petition is devoid of

merits. Although application to travel abroad was allowed by order dated 20th January 2020, for a period of 2½ years Respondent no.1 was not in a position to travel abroad. It was pointed out by learned Advocate for Respondent no.1 that show cause notice was issued u/s.124 of Customs Act. There was no attempt by the Petitioner to get stay to the said impugned orders since last two years. This petition is pending in this Court for a period of about 1½ year. Apparently the petition was not moved by Petitioner for obtaining any orders to set aside the impugned orders or stay of the impugned orders. It was submitted by learned Advocate for Respondent no.1 that till today no process is issued by the Court. Nothing was recovered from Respondent no.1. On account of lapse of time and considering the affidavit filed by Respondent no.1, he can be permitted to travel abroad for a period of one month on certain terms and conditions.

12. Hence, I pass following order :

ORDER

- (i) Writ Petition is rejected;
- (ii) The respondent no.1 is permitted to travel to Japan for a period of one month from 15th July 2022 or immediately thereafter after completion of formalities;
- (iii) The respondent no.1 shall furnish additional cash security of Rs.1,00,000/-, which will be refundable after he returns to India;
- (iv) Respondent no.1 is directed to give itinerary of his tour of Japan to the Investigating Officer;
- (v) Respondent no.1 is directed to furnish detailed address and contact numbers to the Investigating Officer during his travel abroad;
- (vi) Respondent no.1 is directed to furnish two references along

with their consent to the Department who can be contacted in his absence;

(vii) Respondent no.1 shall give an undertaking that he shall not extend the period of stay at abroad;

(viii) Respondent no.1 is directed to remain present before the Court within 48 hours upon his returning from Japan;

(ix) The AIU Department is directed to hand over the passport of respondent no.1;

(x) Respondent no.1 is directed to report Department immediately after his returning from Japan and re-deposit the passport with petitioner Department;

(xi) Respondent no.1 to give undertaking that his advocate will represent him in adjudication proceedings;

(xii) Respondent no.1 is directed to furnish additional security of Rs.1,00,000/- referred to in clause (iii) before Trial Court before leaving India.

(PRAKASH D. NAIK, J.)

MST