



Crl.R.C.No.893 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Revision Petition No.893 of 2022

Khaja Mohideen
S/o Abdul Khader

... Petitioner

-Versus-

State Rep. By
The Assistant Commissioner of Police,
Cyber Crime Cell,
Egmore, Chennai 600 008.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure praying to call for the records culminating in the order dated 14.02.2022 passed in Crl.M.P.No.31031 of 2021 in C.C.No.15273 of 2008 by the learned Chief Metropolitan Magistrate at Chennai and set aside the order dated 14.02.2022 passed by the learned Chief Metropolitan Magistrate, Chennai in Crl.M.P.No.31031 of 2021 in C.C.No.15273 of 2008 and consequentially, direct the learned Chief Metropolitan Magistrate, Egmore, Chennai, to return the Passport of the petitioner bearing No.P3212686 which has been impounded by him subsequent to the seizure made by the respondent.

For Revision Petitioner : Mr.M.Aravind Subramanyam

For Respondent / State: Mr.S.Vinoth Kumar, GA (Crl. Side)



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ORDER

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This Criminal Miscellaneous Petition is filed against the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.31031 of 2021 in C.C.No.15273 of 2008 dated 14.02.2022 in and by which, the prayer of the petitioner to return his passport was rejected by the learned Chief Judicial Magistrate, Egmore, Chennai.

2. Heard both sides.

3. The learned counsel appearing on behalf of the petitioner would submit that this is a case in which the petitioner, who was not at all connected with the offence, has been unnecessarily arrayed as accused and he was only the person who was attending the court all along and since he went abroad for his avocation without any intention to abscond whatsoever only to support his family, he was absent and therefore, NBW was issued for his failure to appear in the court.

4. The learned counsel would further submit that now his VISA has also expired and he has to take fresh VISA and go for work abroad so that he can support his family. The learned counsel would further submit that petitioner will appear before the trial court without fail on all necessary



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hearing dates. The learned counsel would also submit that there will not be any difficulty for the prosecution as appropriate conditions may be imposed by this court. He would also rely upon the judgment of this court in Crl.O.P.(MD) No.23415 of 2018 whereunder by imposing appropriate conditions, including filing of an affidavit of undertaking and informing the whereabouts to the respondent police, the passport was ordered to be returned and submit in the instant case also the passport may be ordered to be returned with such conditions and in that event there should not be any prejudice to the prosecution.

5. Per contra, the learned Government Advocate (Criminal Side) would submit that this is not a case where the passport was seized as part of the investigation and the petitioner was absconding for a period of more than 10 years and therefore, NBW was issued. When the petitioner filed an application seeking to recall the NBW, the same was dismissed by the trial court as against which the petitioner approached this court by way of original petition in Crl.O.P.No.16443 of 2021 under Section 482 of Cr.P.C. By order dated 20.09.2021, as a condition to recall the non bailable warrant (NBW), this court had directed the petitioner to surrender his passport and



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pursuant to which, the passport now stands surrendered before the trial court. The trial court itself did not have any authority to return the passport and therefore, the present application filed by the petitioner before the trial court for the return of the passport and this consequential revision are without any merits.

6. I have considered the rival submissions made on behalf of either side.

7. I am in agreement with the contentions of the learned Government Advocate (Criminal Side) since the passport was directed to be surrendered as a condition to recall the warrant by this court in exercise of its power under Section 482 of Cr.P.C., there was no occasion for the learned Magistrate to return the passport under Section 451 of Cr.P.C. Now, the only grievance expressed by the petitioner is that he is suffering on account of non return of passport as he has to go abroad due to his avocation so as to support his family. In that view of the matter and considering the fact that the case is of the year 2008 and also the fact that since it has been represented that the accused are either regularly appearing or represented by their respective counsel and charges have also been framed and 13



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witnesses are to be examined in the case, I am of the view that the trial court can take up the case as expeditiously as possible on day to day basis and dispose of the same and in any event, not latter than three months from the date of receipt of a copy of this order.

This Criminal Revision Petition is disposed of accordingly with the above directions.

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Index : yes/no

Speaking order/Non-speaking order

kmk

To

1.The Chief Metropolitan Magistrate Egmore, Chennai 600008.



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D.BHARATHA CHAKRAVARTHY. J.,

kmk

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