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Crl.O.P.No.19910 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl. O.P. No.19910 of 2023

S.Kartheekyan

.. Petitioner

Vs.

State by

1.Deputy Superintendent of Police,
CBI/ACB, Chennai.

2.The Inspector of Police,
CBI/ACB, Chennai.

..Respondents

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to set aside the orders passed by the XI Additional Special Judge for CBI cases, Singaravalar Maligai, Chennai-1, in Crl.M.P.No.7643 of 022 dated 03.03.2023 in C.C.No.36 of 2017 and recall the Non Bailable Warrant issued against the petitioner dated 24.10.2016.

For Petitioner

: Mr.R.C.Manoharan

For Respondents

:Mr.K.Srinivasan,
Special Public Prosecutor
For CBI Cases.



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ORDER

The petitioner herein is an absconding accused in C.C. No.36 of 2017 on the file of XI Additional Special Court for CBI Cases at Chennai. While the case pending, this petitioner has left India and failed to attend the Court. Hence, Non Bailable Warrant (NBW) was issued against him. Consequently, look out notice issued against him. Since his passport expired on 17.08.2018, the petitioner has applied for renewal of passport from Dubai but rightly the passport authority had not acted upon his Application, in view of pendency of look out notice.

2. The petitioner has filed W.P. No.12763 of 2021 before this Court seeking direction to the passport authority to consider his application for renewal of passport. This Court vide order dated 16.08.2022, taking note of the fact that a case pending against him before the IX Additional Special Court for CBI been split up from the main C.C. No.8 of 2002 on his abscondance, had given liberty to the petitioner herein to approach the trial Court for the remedy sought in the Writ Petition.

3. Accordingly, the petitioner has filed Crl.M.P. Nos.7642 & 7643 of 2022 under Section 70 (2) of Cr.P.C to recall the Non Bailable Warrant



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issued against him on 15.11.2017 without insisting his presence before this Court in the split up case C.C.36 of 2017 and to withdraw the look out notice issued against him.

4. The trial Court, after considering the merits of the petition, dismissed both the Miscellaneous Petitions stating that, the NBW which is now sought to be recalled is pending against the accused since 01.02.2017. In view of the pendency of NBW for a long time, the case against the petitioner was split up from the main case and assigned C.C. No.36 of 2017. Insofar as, the main case is concerned, 65 witnesses have already been examined and trial against them is in the verge of completion. After absconding for more than six years, the petitioner is now filed petition to recall without surrendering to derail the progress of case of the main accused. The petitioner, as on date have no valid visa or passport. He is overstaying in Dubai and therefore, request to recall the warrant without his appearance and to recall the lookout notice cannot be entertained.

5. The order of the trial Court dismissing Crl.M.P. Nos.7642 and 7643 of 2022 is challenged by way of Crl.O.P. No.19910 of 2023 under



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Section 482 of Cr.P.C.

6. The learned counsel for the petitioner submitted that, in view of his non renewal of the passport which expired on 17.08.2018, the petitioner is unable to come back to India and the lookout notice issued by CBI is an impediment for getting his passport renewed. Therefore, his non appearance before the trial Court is explained. He is unable to come to India and appear before the trial Court in person and get the NBW recalled only due to the reason stated.

7. This Court, on perusing the records finds that, the petitioner herein was arrayed as 13th accused in RC.52A/1996 registered by CBI/ACB/Chennai, for offences under Sections 120(B) r/w 420, 467, 468, 467 r/w. 471, 468 r/w. 471, 477A of IPC and under Sections 7, 12, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

8. The case relates to fraud committed in respect of improper Refinancing of M/s.India Housing Finance Development Limited, by the officials of National Housing Bank along with public servants and few private individuals. The petitioner arrayed as an accused was a Deputy Manager in M/s.India Housing Finance Development Limited. After



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completion of investigation, final report was filed by the CBI and the same was taken on file by the Special Court as C.C.No.8 of 2002 on 08.05.2002.

9. The petitioner contends that till 01.02.2017, he was regularly attending the Court and thereafter, owing to his employment, he left to Dubai. Due to his non appearance, the trial Court issued NBW and later splited the case against him from the main case C.C. No.8 of 2002 and numbered it as C.C. No.36 of 2017. When he sought for renewal of his passport which expired on 17.08.2018, he came to understand that lookout notice has been pending against him and therefore passport could not be renewed.

10. From the records, it is clear that the petitioner is overstaying in Dubai without valid passport and visa. There is legal impediment for him to return back to India due to expiry of his passport. However, the Indian Law permits an Indian National to come back to India even without valid travel documents with an Emergency Certificate issued by the Embassy. Illegal resident in the UAE have the opportunity of coming back to India



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by exploring this provision. Provided, the petitioner should satisfies the condition that he is an Indian Citizen on the date of seeking Emergency Certificate. Therefore, in order to facilitate the petitioner herein to come to India and participate in the trial pending against him in India, the following order is passed subject to the conditions.

11. His return to India shall be ensured, if the petitioner surrender before the Indian Embassy, Dubai with all his available travel documents and identity. If he seek for Emergency Certificate to travel back to India, the Indian Embassy shall verify the credentials of the petitioner and issue Emergency Certificate for the petitioner to land at Chennai Airport. The travel programme of the petitioner shall be intimated in advance to the respondent/CBI, so that, CBI can secure him immediately on landing in India. The CBI shall produce the petitioner before the concerned Judge, who has issued the NBW. The petitioner is at liberty to move petition for bail and if any, such bail petition is filed, the trial Court shall consider it on merits and pass appropriate orders. On return to India, the petitioner shall report before the trial Court daily and shall not fail to attend the hearing dates.



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12. Accordingly, this Criminal Original Petition is disposed of with the above direction.

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Internet : Yes/No

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To

1. Deputy Superintendent of Police,
CBI/ACB, Chennai.
2. The Inspector of Police,
CBI/ACB, Chennai.
3. The XI Additional Special Judge for CBI cases,
Singaravelar Maligai, Chennai-1.
4. The Public Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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