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Crl.R.C.No.1718 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1718 of 2022

Viswalingam
S/o.Sempiah,
No.W 501 'C' Sectors,
10th Street, Anna Nagar Extent,
Chennai 600 101

... Petitioner

Vs.

The State, represented by
the Inspector of Police,
CCB Police, EDF-II,
Team-III, Chennai

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 of Crl.P.C.,to call for the records pertaining to order dated 31.10.2022 in Crl.M.P.No.23388 of 2022 in C.C.No.5303 of 2020 on the file of the learned Metropolitan Magistrate for CCB & CBCID Cases, Egmore and set aside the same by allowing this criminal revision petition.

For Petitioner : Mr.P. Rajkumar Pandian

For Respondents : Mr.V. Meganathan, GA (crl.side)

ORDER



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This Criminal Revision has been filed challenging the order dated 31.10.2022 passed by the Metropolitan Magistrate for CCB & CBCID Cases, Egmore in Crl.M.P.No.23388 of 2022 in C.C.No.5303 of 2020 dismissing the application filed by the petitioner seeking return of his passport and certificate of registration related to Overseas Citizenship of India on the ground that the petitioner, in the event of giving passport and certificate of Overseas Citizenship of India, may abscond and the same would cause stagnation of case, which result in delay of trial proceedings.

2. The learned counsel appearing for the petitioner contended that the petitioner was arrested by the respondent police and remanded to judicial custody on 08.09.2020 in connection with a case in Crime No.125 of 2020 for the offence under sections 465, 467, 468, 420 & 471 of IPC and thereafter he was enlarged on bail by the Court, by order dated 01.12.2020 passed by the learned Principal Sessions Judge, Chennai in Crl.M.P.No.11560 of 2020. Totally there were 4 accused in this case and



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the petitioner was arrayed as A2. On filing of charge sheet, the above case culminated into C.C.No.5303 of 2020 and the same is pending trial on the file of Metropolitan Magistrate for CCB and CBCID Cases, Egmore.

3. He further contended that at the time of arresting the petitioner, the respondent police seized petitioner's passport and certificate of registration related to overseas citizenship of India and till date, the respondent police did not return the same. The petitioner belongs to Srilankan National. His son's marriage, was scheduled on 19.11.2022 at Arie Lagoon-Negombo, Srilanka. Therefore, in order to make pre arrangements for his son's marriage, it is necessary for him to visit Srilanka, hence, he filed Crl.M.P.No.23388 of 2022 before the Metropolitan Magistrate for CCB and CBCID Cases, Egmore at Chennai seeking return of his passport, but the learned Magistrate, by his order dated 31.10.2022, dismissed the same by rejecting the relief sought for by the petitioner on the ground that if the passport and certificate of Overseas Citizenship of India was returned, it would not be conducive in the interest of justice and the trial will be



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delayed. Thereafter, the petitioner's son's marriage was solemnized in his absence. Now the petitioner has to go to Srilanka to attend the post marriage function and ceremonies, for which, he requires his passport and overseas citizenship certificate. It is his further submission that the petitioner is regularly appearing before the trial court for hearings.

4. When the matter is taken up for hearing, the learned Govt. Advocate (crl.side) objected to return the passport as well as certificate of registration related to Overseas citizenship of India stating that if the petitioner is permitted to go abroad, the trial proceedings would be delayed.

5. In reply, the learned counsel for the petitioner submitted that the petitioner seeks return of his passport and certificate of registration related to Overseas citizenship of India only for a period of four weeks and he is ready to file an affidavit to this effect and after attending his son's post marriage functions, he will return to India and surrender his passport before the respondent police.



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6. I have considered the arguments advanced on both sides and perused the entire materials available on record.

7. On a perusal of records, it is seen that the respondent police has registered a case against the petitioner along with 3 others in Cr.No.125 of 2020 for the offences punishable under sections 465, 467, 468, 420, 471 of IPC. After investigation, charge sheet has been filed and the case has been taken on file in C.C.No.5303 of 2020 on the file of Metropolitan Magistrate for CCB & CBCID Cases, Egmore. Further, the fact reveals that at the time of arrest, the respondent police seized the passport issued by Sri Lanka bearing Passport No.N7148372 along with certificate of registration related to Overseas citizenship of India. In the certificate of Registration of Firm filed in the typed set, the residence of the petitioner in Srilanka is mentioned as 'Belmoral Estate, Agarapathana'.

8. Now the petitioner is seeking to return his passport along with



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certificate of registration related to Overseas citizenship of India only for the purpose of attending his son's post marriage function at Srilanka for a period of four weeks. Moreover, the petitioner has also filed an affidavit of undertaking dated 04.01.2023, wherein, in paragraph 5, he gave his undertakings as follows;

“In the above circumstances, my son's marriage was solemnized in my absence. I couldn't take part in such auspicious occasion and I suffered a lot. Since no one from my family attended my son's marriage, my son got affected emotionally. In order to attend post marriage function and ceremonies, I require my passport and Overseas Citizenship Certificate. I pray this Hon'ble Court to consider my plea and in respect of the same I swear this Affidavit as follows:

i. I furnish all the details and information before the Trial Court by an Affidavit regarding my date of travel to Sri Lanka, place of stay at Sri Lanka, E-mail ID, contact cell number in Sri Lanka and date of return to Chennai, in the event of returning my passport and Overseas citizenship Certificate.

ii. I undertake that i will return back to Chennai and



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surrender my passport and Overseas citizenship certificate within 4 weeks from the date of my travel to Sri Lanka from Chennai.

iii. I undertake that I will be duly represented by my counsel on all hearing dates. I further undertake that my counsel will not dispute or question the identity of the witnesses examined during my absence and will not seek adjournment on the ground of my absence.

iv. I undertake that I will not misuse my liberty in any manner and my daughter Aksheyaa Aswanthy (Accused No.1) and wife Dharshini (Accused No.3) will attend the case proceedings regularly in the meantime.

v. I undertake to obey any orders to be passed by this Hon'ble Court and abide with any conditions.'

9. Having regard to the facts and circumstances of the case and considering the submission of the learned counsel appearing for the petitioner and the undertaking given by the petitioner in his affidavit as stated above, I am inclined to return the passport of the petitioner along with certificate of registration related to Overseas citizenship of India to the petitioner for a period of four weeks.



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10. Accordingly, the respondent police is hereby directed to return the passport of the petitioner bearing Passport No.N7148372 along with certificate of registration related to Overseas citizenship of India for four weeks from the date of receipt of a copy of this order on the following conditions;

- 1. the petitioner has to give an affidavit of undertaking to the respondent police that on returning to India after four weeks, he shall immediately surrender his passport along with certificate of registration of overseas citizenship of India;*
- 2. the petitioner shall furnish correct details of his residential address of Srilanka as well as India before the respondent police.*
- 3. the petitioner's wife and daughter should also give an undertaking to that effect.*

11. The Criminal Revision Case is disposed of accordingly on the above terms.



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04.01.2023

Index:yes/no
Internet:yes/no
msr

To

1. The Metropolitan Magistrate for CCB & CBCID Cases, Egmore.
2. The Inspector of Police, CCB Police, EDF-II,
Team-III, Chennai
3. The Public Prosecutor, High Court, Madras.

V.SIVAGNANAM, J.

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