



Crl.O.P.(MD)No.10667 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.10667 of 2023

1.Maathusha Ann

2.Abdinav Kumar Singh

... Petitioners

Vs.

State through
The Inspector of Police,
Thiruthangal Police Station,
Viruthunagar District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 439(i) r/w 482 of the Code of Criminal Procedure, to set aside the condition to surrender the passport after renewal in the order passed by the learned Principal District and Sessions Judge, Virudhunagr District at Srivilliputhur in Cr.M.P.No.1041/2023 dated 10.04.2023 as illegal and consequently, totally relax the condition No.(i) imposed on the petitioners in the order dated 02.11.2022 in Cr.M.P.No.3437 of 2022 on the file of the learned Principal District and Sessions Judge, Virudhungar District at Srivilliputhur.



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For Petitioners : Mr.G.Karuppasamy Pandiyan
For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (CrI. Side)

ORDER

This Criminal Revision Case has been filed to set aside the condition to surrender the passport after renewal in the order passed by the learned Principal District and Sessions Judge, Virudhunagr District at Srivilliputhur in Cr.M.P.No.1041/2023 dated 10.04.2023 as illegal and consequently, totally relax the condition No.(i) imposed on the petitioners in the order dated 02.11.2022 in Cr.M.P.No.3437 of 2022 on the file of the learned Principal District and Sessions Judge, Virudhunar District at Srivilliputhur.

2.The petitioners herein are arrayed as A1 & A2 in Crime No.250 of 2020 for the offence punishable under Sections 295(A), 505(1)(c), 509 IPC r/w Section 4 of TNPHW Act and Section 67 of IT Act @ Sections 509, 354 IPC r/w Section 4 of TNPHW Act and Section 67 of IT Act. In pursuance to the registration of FIR, they were arrested and remanded to



judicial custody. They filed bail petition and they were granted bail by the trial Court on the following condition:

i)The petitioners shall surrender their passports before the Judicial Magistrate No.II, Sivakasi

ii)The petitioners shall execute a personal bond for Rs.25,000/- with two solvency sureties for the likesum each to the satisfaction of Judicial Magistrate No.II, Sivakasi.

iii)The sureties should affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar Card or Bank Pass book to ensure their identity.

iv)The petitioners/accused shall appear before the Investigating Officer, everyday at 10.30 am., until further orders.

v)The petitioners shall not abscond either during the investigation or trial, that the petitioners shall not tamper with evidence or witness either during investigation or trial.

*vi)On breach of any of the aforesaid conditions, the Judicial Magistrate is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Judicial Magistrate himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala (2005)AIR SCW 5560.***



3. Accordingly, the petitioners surrendered their passport before the learned Judicial Magistrate No.II, Sivakasi. Thereafter, they filed a petition for relaxation in Cr.M.P.No.1041 of 2023, in order to renew their passport. Thereby, the petition was partly allowed and the first petitioner was permitted to take the passport, that too for a limited purpose of renewal and thereafter, directed the first petitioner to return the passport.

4. The learned counsel appearing for the petitioner would submit that impounding of the passports of the petitioners is against the dictum laid down by the Hon'ble Supreme Court of India reported in **(2008) 3 SCC 674** . As per the dictum, only Passport Authority can impound the passport as per Section 10(3) of the Passports Act and it does not confer either to police or Court to impound the passport. He would further submit that it is nothing but violation of liberty under Article 21 of the Constitution of India.

5. On perusal of records revealed that the petitioners are regularly complying with the conditions as directed by the trial Court. Insofar as



surrender of passport is concerned, the Hon'ble Supreme Court of India held as follows:

In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a “passport” is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

6.Considering the above dictum laid down by the Hon'ble Supreme Court of India, impounding of the passports of the petitioners cannot be done. That apart, the petitioners also undertake to file affidavit to the effect that whenever they have to visit abroad, they will get proper and



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prior permission from the trial Court. Considering the same, the condition imposed by the trial Court while granting bail in respect of surrender of passport is hereby deleted and the Court below is directed to return the passports of the petitioners, after obtaining xerox copy of the same. The petitioners shall file individual undertaking affidavit stating that they will inform about their abroad visit for proper permission.

7.In the result, this criminal original petition is allowed.

16.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District and Sessions Judge,
Virudhunagr District at Srivilliputhur
- 2.The Inspector of Police,
Thiruthangal Police Station,
Viruthunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN,J.

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