



WEB COPY



Crl.R.C.No.76 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

DELIVERED ON : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.76 of 2024

Vellachi V. Arunachalam

... Petitioner/A1

Vs.

1. Inspector of Police,
Bank Fraud Wing, Team XI,
Central Crime Branch, Vepery,
Chennai – 600 007.
(F.I.R. in Cr.No.80 of 2009)

2.A.Muthu

[R2 suo-motu impleaded as per order
dated 12.01.2024 in Crl.R.C.No.76 of 2024]

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the impugned order dated 29.12.2023 in Crl.M.P.No.59124 of 2023 in C.C.No.7140 of 2023 on the file of the Metropolitan Magistrate Court for Exclusive Trial of CCB, Egmore and allow this revision petition.



WEB COPY



CrI.R.C.No.76 of 2024

For Petitioner : Mr.N.R.Elango, Senior Counsel &
Mr.G.Kalyanchand Jhabak
for M/s.Surana & Surana

For Respondent-1 : Mr.S.Raja Kumar
Additional Public Prosecutor

For Respondent-2 : Mr.M.Deivanandam

ORDER

This petition is filed seeking to set aside the impugned order dated 29.12.2023 in CrI.M.P.No.59124 of 2023 in C.C.No.7140 of 2023 on the file of the learned Metropolitan Magistrate, Additional Court for Exclusive Trial of CCB Cases, Egmore, Chennai.

2.The petitioner/A1 in C.C.No.7140 of 2023, an Indian native settled in U.S.A., who landed in Chennai for a short visit, was detained on 21.10.2023 by the immigration authorities for the reason that Look Out Circular (“LOC”) issued against her and thereafter, she was produced before



Crl.R.C.No.76 of 2024

WEB COPY

the Central Crime Branch Police for enquiry. After detention, on 21.10.2023, notice under Section 41-A of Cr.P.C. issued to the petitioner directing her to appear before the Central Crime Branch, Vepery on 25.10.2023. Thereafter, the petitioner filed anticipatory bail petition before this Court in Crl.O.P.No.26126 of 2023 and was granted anticipatory bail by this Court on 15.11.2023 with certain conditions. Thereafter, the petitioner filed W.P.No.33856 of 2023 before this Court, challenging the LOC issued by the immigration authorities at the request of the first respondent/Inspector of Police, CCB as it amounts to arbitrary exercise of power and infringing upon the petitioner's constitutional right to travel. The Writ Court, on 14.12.2023, considering the fact that the petitioner is terminally ill, who requires urgent medical treatment, which is available only in abroad, gave liberty to the petitioner to approach the Magistrate concerned. Hence, she filed Crl.M.P.No.59124 of 2023 in C.C.No.7140 of 2023 before the learned Metropolitan Magistrate, Additional Court for Exclusive Trial of CCB



Crl.R.C.No.76 of 2024

WEB COPY

Cases, Egmore, Chennai, seeking permission to travel to USA to continue her treatment at National Institute of Health Clinical Centre, USA for LYMPHANGIOLEIOMYOMATOSIS (“LAM”) disease. The trial Court, by order dated 29.12.2023, dismissed the said petition, against which, the present revision.

3.The case of the petitioner is that the petitioner's father Mr.T.N.M.Arunachalam/de-facto complainant, said to have lodged a complaint that three lockers in the Central Bank of India, Mount Road Branch bearing Locker Nos.72, 136 and 379 broken open on the premise that the keys were lost and an F.I.R. in Crime No.80 of 2009 dated 12.03.2009 registered by the first respondent. In these lockers family jewels of T.N.M.Arunachalam kept for safety. The de-facto complainant's wife died in the year 1998, the defacto complainant due to his advancing age, included the petitioner and his grandson Mr.A.M.Arunachalam as joint account holders to operate three bank lockers. During April, 2006, the de-facto complainant



Crl.R.C.No.76 of 2024

WEB COPY

suffered stroke and he became immobilized, bedridden. On 26.10.2006, the petitioner/second daughter of defacto complainant prevailed upon him by force to delete grandson's name and to include the name of third daughter, namely, Umayal Arunachalam as joint locker holder. During December, 2007, the petitioner along with two persons came to the bedroom of de-facto complainant, who was bedridden, projecting them as Bank Manager and Doctor took his Left Thumb Impression on several sheets of blank paper. The defacto complainant's grandson A.M.Arunachalam was informed that Central Bank of India lockers broke open and ceased to exist and came to know that the petitioner and her sisters Lakshmi Arunachalam and Umayal Arunachalam took away all jewels and jewels belong to de-facto complainant's mother and his wife, as per the family custom, all jewels would go to his son A.Muthu/second respondent.

4. Thereafter, for the theft of jewels by the petitioner from the lockers, a complaint lodged and F.I.R. in Crime No.80 of 2009 was registered



Crl.R.C.No.76 of 2024

WEB COPY

for offence under Sections 406 and 420 of I.P.C. Thereafter, referred charge sheet filed on 05.06.2012 as 'Mistake of Fact'. Aggrieved by the same, ten years later, the second respondent/A.Muthu, son of de-facto complainant filed a protest petition on 18.05.2022 to re-investigate F.I.R. in Crime No.80 of 2009 and the said protest petition was allowed on 28.10.2022 and reinvestigation commenced. At that time, the LOC was issued against the petitioner bearing Ref No.1/SIC (ACK)/LOC/2023-7922 dated 03.06.2023 without notice to the petitioner and thereafter, based on the LOC, the petitioner was detained when she came to India on 21.10.2023. At that time only, she came to know about the above case and thereafter, she filed anticipatory bail petition and also challenged the LOC by way of a writ petition.

5.The learned counsel for petitioner submitted that the petitioner was born in Chennai on 05.09.1951. In the year 1973, the petitioner left India to pursue her engineering degree in the University of Kansas and thereafter



Crl.R.C.No.76 of 2024

WEB COPY

settled to work in USA as a well qualified engineer. After her retirement in 2011, she resides in USA. She has two sisters, namely, Lakshmi Arunachalam and Umayal Arunachalam, who are also permanent residents and citizens of USA and her brother A.Muthu, who is a permanent resident in Mumbai. The petitioner scheduled a short visit to Chennai and Coimbatore to meet her friends and family on a holiday. She reached India on 21.10.2023 and scheduled to return back to USA on 05.11.2023. When the petitioner landed at Chennai, she was detained by the immigration authorities for the reason LOC issued against her. The F.I.R. disclose a family dispute given criminal colour. Since it is a family dispute, the petitioner had a meeting with Mr.A.M.Arunachalam, her brother's son, to settle the issue amicably and a letter dated 23.10.2023 was forcibly obtained to settle the issue amicably. Thereafter, on 27.10.2023, petitioner met Mr.A.M.Arunachalam in his lawyer's office to resolve the issue, where the petitioner was threatened of immediate arrest and remand during the meeting and the petitioner was



Crl.R.C.No.76 of 2024

WEB COPY

coerced to provide bank guarantee security for an amount of USD 350,000 and four pieces of jewels were taken from her. The petitioner revoked the compromise letter on 28.11.2023, earlier on 16.11.2023, the respondent police enquired the petitioner for two hours and the petitioner cooperated for the investigation and the bank officials were also enquired. Despite the petitioner being a senior citizen with terminal illness, she was coerced, threatened and ill-treated.

6.He further submitted that the petitioner is currently undergoing medical treatment in USA for LYMPHANGIOLEIOMYOMATOSIS (LAM), which is a rare terminal disease. The petitioner medically advised to undertake treatment within frequent periodic intervals. The petitioner is in dire need of medical attention from the National Institutes of Health Clinical Centre, USA and it is the only medical institute with a specialised department dealing with research and development in the field of Pulmonology, especially keeping in mind that LAM, a rare disease which causes a decline



Crl.R.C.No.76 of 2024

WEB COPY

in pulmonary health. Apart from LAM, the petitioner is suffering with the following diseases:

- (i) *Left renal angiomyolipoma*
- (ii) *Right atypical angiomyolipoma*
- (iii) *Mild intermittent asthma*
- (iv) *Diabetes mellitus type 2*
- (v) *Bilateral cataracts*
- (vi) *Multiple lipoma lesions*
- (vii) *Allergic rhinitis*
- (viii) *Dry eyes – mild*
- (ix) *Chronic cough*
- (x) *Lipoma at right shoulder and right foot*

7.Since the petitioner scheduled a short travel to India till 05.11.2023, she did not carry any medicines for long duration and she has been unexpectedly detained in India. The learned counsel further submitted that in this case now investigation completed, charge sheet filed and the same taken on file in C.C.No.7140 of 2023. The petitioner as well as other accused



Crl.R.C.No.76 of 2024

WEB COPY

both appeared before the trial Court and participating in the trial. The petitioner's brother, A.Muthu, filed an intervening petition making wild and false allegations. Even in the complaint, the petitioner's father, aged about 90 years then, had stated that his left thumb impression was obtained during the year 2007, but the complaint was lodged with a delay of two years, i.e., in the year 2009. Taking advantage of the petitioner's father's old age and health condition, her brother, envious about the cordial relationship and the status of the petitioner and other sisters in USA, wanted to usurp the entire family property is sustaining the false complaint against the petitioner. The only allegation is that the petitioner prevailed over her father to delete the name of 2nd respondent's son as a joint locker holder. The entire complaint would prove that it is a family dispute. The above case is used as an arm twisting device to settle a family dispute.

8.The learned counsel for the petitioner relied upon the following



Crl.R.C.No.76 of 2024

decisions:

WEB COPY

- (i) Hon'ble Supreme Court judgment in the case of *Srichand P. Hinduja vs. State through CBI, New Delhi* reported in *CDJ 2001 SC 1986*;
- (ii) Hon'ble Supreme Court judgment in the case of *Satish Chandra Verma vs. Union of India and others* reported in *(2019) SCC OnLine 2048*;
- (iii) Madras High Court's judgment in the case of *G.Balaji vs. State and others* reported in *MANU/TN/9640/2021*;
- (iv) Madras High Court's judgment in the case of *Kakulammarri Kalyan Srinivasa Rao vs. C.B.I.* reported in *(2019) SCC OnLine Mad 15924*;
- (v) Madras High Court's judgment in the case of *R.Pandurangan vs. State rep. by Inspector of Police* reported in *(2019) SCC OnLine Mad 1356*;
- (vi) Madras High Court's judgment in the case of *Kishor Kharat vs. Superintendent of Police* in *Crl.O.P.No.4319 of 2022*;
- (vii) Madras High Court's judgment in the case of *Dr.Ordetta Hanna Mendoza vs. Government of Tamil Nadu and three others* reported in *2015-3-L.W.393*; and
- (viii) Delhi High Court's judgment in the case of *Sandeep Singh Deswal vs. State (Govt. of NCT of Delhi)* reported in *(2023) SCC OnLine Del 3322*;



Crl.R.C.No.76 of 2024

WEB COPY

wherein it is held that the issuance of LOC is a coercive measure aimed at ensuring that an accused appears before the investigating agency and/or a Court of Law, however, this power is to be used sparingly only in exceptional cases and LOC is not to be issued in a routine manner as it may affect the liberty of an accused persons. Hence, prayed for allowing this petition.

9.The learned counsel appearing for the second respondent/intervenor submitted that the second respondent herein is the eldest son of Late. T.N.M.Arunachalam, the informant in Crime No.80 of 2009. The said T.N.M.Arunachalam expired on 19.07.2012 and the second respondent as one of his surviving legal heirs had stepped into as de-facto complainant and pursuing the complaint. The petitioner is his sister and the allegations were also against two other sisters, namely, Lakshmi Arunachalam and Umayal Arunachalam. The second respondent's father lodged a complaint against his three daughters, namely, the petitioner,



Crl.R.C.No.76 of 2024

WEB COPY

Lakshmi Arunachalam and Umayal Arunachalam for theft of jewels kept in the lockers in Central Bank of India, Mount Road Branch and the case was registered for offences under Sections 406 and 420 of IPC. Later the case was referred as mistake of fact.

10.Since it was a slip shot investigation, the second respondent filed a protest petition in Crl.M.P.No.12552 of 2022 in RCS No.167 of 2022 and consequently, the first respondent reopened the case for further investigation, issued Look Out Circular against the petitioner, who came to India and was detained in furtherance to the Look Out Circular. The petitioner being an Overseas Citizen of India and American National may leave India once for all, if she is permitted to travel to USA. He further produced the typed set containing the letter submitted by the second respondent to the Bank on 22.11.2007 informing that there might be chances of opening up of lockers with false representation by the petitioner and the keys are with his son A.M.Arunachalam. Further, produced a letter of



Crl.R.C.No.76 of 2024

WEB COPY

compromise issued by the petitioner on 27.10.2023 and later withdrawing the same. Further he submitted that for the petitioner's health condition, treatment is very much available in Appollo Hospital, Hyderabad, as per Google search, the petitioner can very well avail the treatment for Lungs in India. The case has been registered in the year 2009, now charge sheet filed and the same was taken on file in C.C.No.7140 of 2023. The case is pending for decades and hence, strongly objected for granting permission to the petitioner to leave India. Further submitted that, if the petitioner is allowed to leave India, the trial before the Lower Court would get stalled. In support of his contention, the learned counsel placed reliance on the judgment of Punjab and Haryana High Court in the case of *Amit Sureshmal Lodha vs. State of Haryana* in CRM-M-3304-2021 (O & M), wherein it is stated that balance between the right of the petitioner to travel abroad and also right of the prosecution to duly prosecute the petitioner so as to prevent him from evading the trial has to be considered and stringent conditions to be imposed



Crl.R.C.No.76 of 2024

WEB COPY

ensuring the petitioner's presence before the trial Court. Hence, prayed for dismissal of this petition.

11.The learned Additional Public Prosecutor appearing for the first respondent submitted that on the complaint of Late. T.N.M.Arunachalam that the three bank locker Nos.72, 136 and 379 in his wife name in Central Bank of India, Mount Road were opened for keeping all his family jewels. His wife Sigappai died in the year 1998. In view of his advancing age, he included his second daughter/petitioner's name and his grandson A.M.Arunachalam's name for operating three bank lockers. During April, 2006, the de-facto complainant suffered with stroke and he was bedridden. Later, the de-facto complainant came to know that all three bank lockers maintained in Central Bank of India were broke open and ceased to exist. Hence, he lodged a complaint against his daughter and bank officials. The case was registered in Crime No.80 of 2009 on 12.03.2009, later the same was closed as 'Mistake of Fact' and final report was submitted on 27.02.2012, RCS notice was served



Crl.R.C.No.76 of 2024

WEB COPY

to the de-facto complainant through registered post on 11.05.2012. The second respondent/de-facto complainant's son filed Crl.M.P.No.12552 of 2022 and the trial Court passed an order for reinvestigation on 28.10.2022 but investigation of the case commenced on 04.01.2023 and the bank officials enquired, bank records and details were sought for investigation, LOC notice issued on 03.06.2023 in order to prevent the accused from leaving the country.

12.On 21.10.2023, the petitioner was detained by the immigration authorities at Chennai International Airport and was issued 41-A notice. Subsequently on 27.10.2023, it was informed that she handed over four items of jewels to the second respondent and a compromise was arrived between them. In the meanwhile, the petitioner obtained anticipatory bail in Crl.O.P.No.26126 of 2023 on 15.11.2023 and after obtaining Anticipatory Bail, the compromise was recalled and revocation letter dated 28.11.2023 was sent to the second respondent. On 23.11.2023, the retired bank officials



Crl.R.C.No.76 of 2024

WEB COPY

of Central Bank of India were enquired and it was found that the petitioner in collusion with one John Thomas, Assistant General Manager of the bank deleted the second respondent's son's name from the locker operation register and added Umayal Arunachalam's name without the knowledge of the de-facto complainant. Hence, he was also arrayed as an accused. On completion of investigation, final report filed for offence under Sections 409, 420 r/w 120-B of IPC. The petitioner filed W.P.No.33856 of 2023 for removing the LOC and this Court directed the petitioner to approach the trial Court. Hence, the petitioner approached the trial Court and the trial Court dismissed the same. The only apprehension of the investigating agency is that if the petitioner is permitted to travel abroad, the trial will stalled and hence, appropriate stringent conditions can be imposed for securing the petitioner's presence in the trial.

13.Considering the submissions made and on perusal of the materials, it is seen that in this case the dispute is with regard to opening of



Crl.R.C.No.76 of 2024

WEB COPY

the three lockers in Central Bank of India, Mount Road Branch bearing Locker Nos.72, 136 and 379, which was in the name of petitioner's father/de-facto complainant, wherein, the de-facto complainant kept jewels of his mother, wife and son. The relationship between the petitioner and the second respondent are not in dispute. It is seen that the family jewels have been kept in the lockers for safe custody.

14.It is the contention of the second respondent that the keys were entrusted to the de-facto complainant's grandson T.M.Arunachalam but on false representation Lockers broke open. Whether the de-facto complainant's left thumb impression taken by force or coercion is the fact in issue. The de-facto complainant at the time of lodging a complaint was in his 90's now he is no more. The petitioner obtained anticipatory bail from this Court in Crl.O.P.No.26126 of 2023 and she executed sureties and now she is appearing before the trial Court. She challenged the issuance of LOC in W.P.No.33856 of 2023. This Court, by an order dated 14.12.2023,



Crl.R.C.No.76 of 2024

WEB COPY

considering that the petitioner's health condition requires medical treatment, given liberty to approach the Lower Court. The Lower Court denied the petitioner's right to travel, hence, she approached this Court.

15.The admitted position of the case is that Crime No.80 of 2009 was registered on 12.03.2009, the case was closed as 'Mistake of Fact' on 05.06.2012, final report was submitted on 27.02.2012, notice was issued to the de-facto complainant on 11.05.2012 and the petitioner's father/de-facto complainant died on 19.07.2012. Ten years thereafter, the petitioner's brother/second respondent, stepping into the shoes of his father as de-facto complainant filed a protest petition on 18.05.2022. This protest petition was allowed on 28.10.2022. These facts known to the petitioner when the immigration authorities detained her on 21.10.2023. The petitioner is an Indian citizen by birth and an Overseas Citizen of India (OCI). Now charge sheet filed, petitioner appeared before the trial Court, cooperating with the



Crl.R.C.No.76 of 2024

WEB COPY

trial and she will not be a reason for any delay in the trial. On her health grounds she needs to travel to USA.

16.From the medical records it is seen that the petitioner is suffering with unique disease LAM. Further she is also affected with various diseases. She is a senior citizen aged about more than 70 years. It is a dispute within the family with regard to share of their family jewels. The only apprehension is that the petitioner's presence before the trial Court to be ensured and the trial not to be stalled by permitting the petitioner to visit USA. It is seen that the petitioner regularly taking treatment at National Institute of Health Clinical Centre, USA periodically and it is beneficial for the patient to continue the treatment in the said centre for better treatment. Before this Court, the petitioner produced Demand Drafts for a sum of Rs.25,00,000/- to show her bonafide to participate in the Trial, the details of the same are as follows:



Crl.R.C.No.76 of 2024

S.No.	Demand Draft No.	Drawee	Amount (INR)	In favour of	Date
1	265757	State Bank of India	Rs.5,00,000/-	Chief Metropolitan Magistrate, Egmore, Chennai.	25.03.2024
2	265758	State Bank of India	Rs.5,00,000/-	Chief Metropolitan Magistrate, Egmore, Chennai.	25.03.2024
3	265759	State Bank of India	Rs.5,00,000/-	Chief Metropolitan Magistrate, Egmore, Chennai.	25.03.2024
4	265760	State Bank of India	Rs.5,00,000/-	Chief Metropolitan Magistrate, Egmore, Chennai.	25.03.2024
5	265761	State Bank of India	Rs.5,00,000/-	Chief Metropolitan Magistrate, Egmore, Chennai.	25.03.2024

The same to be produced and deposited before the Lower Court. Thereafter, the Lower Court to deposit the same by way of Fixed Deposit. The petitioner also filed an additional affidavit confirming her health condition and production of Demand Drafts.

17.In view of the above, the impugned order dated 29.12.2023 passed in Crl.M.P.No.59124 of 2023 in C.C.No.7140 of 2023 by the learned



Crl.R.C.No.76 of 2024

WEB COPY

Metropolitan Magistrate, Additional Court for Exclusive Trial of CCB Cases, Egmore, Chennai, is set aside and the petitioner is permitted to travel to USA on the following conditions:

- (i) The petitioner is directed to file a fresh affidavit giving details of her contact address in India and an undertaking to appear before the trial Court on hearing dates either personally or through her counsel and she will not be a reason for any delay, she will have no objection in recording evidence in her absence, of course in the presence of her advocate.
- (ii) The petitioner in the affidavit to give contact details as regards her place of stay in USA, mobile number and email id with specific undertaking that she will appear before the trial Court whenever directed by the Trial Court and she will not be a reason for any delay of the trial.
- (iii) The respondent police to inform the Immigration Authorities that the petitioner is permitted to travel without obstruction.



Crl.R.C.No.76 of 2024

WEB COPY

18. With the above directions, this Criminal Revision Case is
allowed.

04.06.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

rsi

To

1. The Inspector of Police,
Bank Fraud Wing, Team XI,
Central Crime Branch, Vepery,
Chennai – 600 007.
2. The Metropolitan Magistrate,
Additional Court for Exclusive Trial of CCB Cases,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.76 of 2024

M.NIRMAL KUMAR, J.

rsi

**Pre-delivery order in
Crl.R.C.No.76 of 2024**

04.06.2024