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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.3745 of 2024

Nashabasharom

...Petitioner/Petitioner

.Vs.

The State rep.by
Inspector of Police
CCD-II Police Station
Tiruppur District.
(Crime No17 of 2023)

.. Respondent/Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside and modify the condition No.2 that the prison authority directed that the accused handed over to the Government recognized Camp/authorities to receive custody of petitioner in Crl.MP.No.10544 of 2023 and release the petitioner on regular bail in connection with the offence registered as Crime No.17 of 2022 with CCD-II, Tiruppur District.

For Petitioner : Mrs.Mehul A.Surti

For respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This petition has been filed challenging condition No.2 imposed by the Court below while granting statutory bail to the petitioner, whereby the petitioner was directed to stay in the Special Camp at Tiruchirappalli and dismissing the



modification petition filed by the petitioner in Crl.MP.No.4 of 2024, seeking to modify the said condition by order dated 4.1.2024.

2. When the matter came up for hearing on 5.3.2024, this Court passed the following order:

Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondent Police.

2. The main ground that was raised by the learned counsel for the petitioner is that the Court does not have the power or jurisdiction to direct the petitioner to be confined in a special camp and such decision can be taken only by the Competent Authority as contemplated under Section 3(2) of the Foreigners Act, 1946. The learned counsel in order to substantiate his submission relied upon the judgment of the Delhi High Court in the case of Emechere Maduabuchkwu vs. State NCT of Delhi & another passed in W.P.(CRL)No.550 of 2022 dated 26.05.2023. The learned counsel submitted that the petitioner even though is a foreign national, is protected under Article 21 of the Constitution of India and the petitioner is entitled for fair trial, as guaranteed under Article 21 of the Constitution of India. Therefore, it was contended that the petitioner can be subjected to any condition until the Competent Authority passes an order under Section 3(2) of the Foreigners Act and the petitioner cannot be confined in a special camp.

3. The learned Government Advocate by relying upon the status report filed before this Court submitted that the Visa of the petitioner expired as on 30.08.2020. The Government of Tamil Nadu has already passed a G.O.(10)No.428 dated 20.12.2023,



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directing the petitioner to reside in the special camp at Tiruchirapalli in the event of her release from the prison. The learned Government Advocate submitted that apart from this case, there are three other cases pending investigation against the petitioner and the petitioner has been arrested in those cases also and has not been enlarged on bail and hence, the petitioner is not in a position to come out of the jail even though statutory bail was granted in this case. The learned Government Advocate also brought to the notice of this Court the order passed in Crl.O.P.No.27181 of 2023 dated 12.12.2023 wherein a similar ground taken by A1 in that case seeking for modification of the condition was rejected and the petition was dismissed. The learned Government Advocate also submitted that the antecedent of the petitioner is highly questionable and the petitioner who entered the Country with the Student Visa was involved in business activities and in the said transaction, had cheated many persons.

4. In the considered view of this Court, there are two issues which requires clarity. The first is as to whether the petitioner was arrested and remanded to judicial custody in the other three cases which are pending against her. Whether any bail was granted in those cases. The second issue is that the Competent Authority has now passed an order under Section 3(2) of the Foreigners Act and has directed the petitioner to reside in the special camp located in Tiruchirapalli in the event of release of the petitioner. In the light of this development, whether it is necessary for this Court to go into the ground that has been raised by the petitioner in this petition.

5. On clarity being given for the above two issues, final orders would be passed in the criminal original petition.



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in which he is now arrayed as accused, namely, James, Osebhohien. However, the finger prints matched and the respondent was able to identify that this petitioner, who is before this Court, is the petitioner , who had obtained bail before the High Court of gujaraj in a different name and had thereafter, fled away from the country. The petitioner's bona fide are extremely suspect. In view of that antecedent, I do not find any reason to interfere with the order complained of. Accordingly, this Criminal Original Petition stands dismissed."

18.It is also submitted that the Ahmedabad Cyber crime Police Station Case no.02 of 2018 is under trail in **CC No.18896/2019** of the Metropolitan Magistrate Court No.11 at Ahmedabad. The Ahmedabad Cyber crime had charged seven accused in their case but the Judicial proceedings of that case was stalled since **all the accused went absconded** and the trial court had issued **non-bailable warrants** for all the **07** accused, as none of them had appeared for a single hearing.

19.It is also submitted that, the petitioner/accused [A2] was also involved in similar nature cases as follows:

Sl. No.	Police Station, offence under Sections	Bail Stage	Property/Amt Lost	State of the case
1.	Tiruppur City, Cyber Crime P.S. Cr.No.07/2023, u/s.66 D IT Act, 420 IPC	Granted, Sureties not produced	57,00,000/- JM III, Tiruppur CMP No.2306 fo 2024 11.3.2024	Under investigation
2.	Karur, Cyber Crime P.S.,Cr.No.01/2023, u/s.66 D IT Act, 420 IPC	Granted, Sureties not produced	45,04,500/- Jm-II, Karur CMP.4229/2023 3.11.2023	Under investigation
3	Krishnagiri, Cyber Crime P.S., Cr.No.17/2023, U/s.66 D IT Act, 420 IPC	Issued PT Warrant but yet to be arrested	1,94,00,000 JM II, Krishnagiri	Under investigation



20.It is submitted that currently the petitioner/accused (A-2) filed this present petition before the Hon'ble High Court of Madras to set-aside and modify the condition no.2, "that the prison authority directed that the accused handed over to the Government Recognized Camp/authorities to receive the custody fo the petitioner" in CrI.MP.No.10544 of 2023 and release the petitioner on regular bail in connection with the offences registered as Crime No.17 of 2022 with CCB-II, Tiruppur District.

21.It is also submitted that, the petitioner/Accused (A-2) is claiming her address to be a permanent one. Contrastingly, the statement recorded from the land lord Ravindrakumar Kushwalla of the house in which the A2 was staying at the time of arrest the rental agreement was signed between A1 and the landlord. The advocate had argued the previous hearing of this case A2 had just visited A1 on the day of arrest and not an associate of A1. **In contrast the CDR analysis revealed that A2 had been staying along with A1 since the time A1 was staying at Malviya Nagar before leaving to Raju Park in New Delhi where they were arrest. Also it is evident from investigation that she had done some online purchase for herself with the same address.**

22.It is submitted that, as the A1 was granted regular bail in previous case with a **condition to surrender his passport in the trial court**, he managed to escape and reenter India with a new identity by **farbricating a new passport**, continuing to indulge infurther crime. **Hence, it is evident that fabricating new identities is not a difficult task for this kind of accused and holding their passports in custody of court had not served its purpose.** With respect to the Ahmedabad Cyber crime case, when the respective court inclined to enlarge the petitioner/Accused (A-2) on bail she had a valid VISA but when she is indicted in this case her **VISA had already expired.** Hence, modifying the bail order with such conditions and not detaining her at the Foreigners; camp may enable her to escape



from the sight of justice by **fleeing to any other country.** Correspondingly, while analysing this accused's mobile phone, it was observed that the money received from numerous victimised individuals had been transferred to various foreign bank accounts, including those in Nigeria, the UK, and Dubai. Consequently, setting her free from custody facilitated the **transfer of the looted funds to these foreign accounts,** thereby causing difficulties for the victims in retrieving their swindled money.

4. Heard Mrs. Mehul A. Surti, learned counsel for the petitioner and Mr. A. Gopinath, learned Government Advocate (Crl. Side) appearing on behalf of the respondent.

5. It is clear from the status report that insofar as the other three pending cases are concerned, the petitioner has been enlarged on bail in two cases but however the sureties were not produced. In the remaining case in Cr. No. 17 of 2023, PT Warrant has been issued and the petitioner is yet to be arrested.

6. The main grievance of the petitioner pertains to condition No. 2 that was imposed by the Court below while granting statutory bail to the petitioner, wherein the petitioner was directed to be kept in the Special Camp at Tiruchirapalli. It was contended that the Court cannot issue such a direction since it is not competent.

7. The above issue that has been raised by the learned counsel for the petitioner has now become academic. The Government has now issued G.O



(1D).No.428 dated 20.12.2023, directing the petitioner to reside at Tiruchirappalli in the event of her release from Prison. In the light of this Government order, even in the absence of condition No.2 imposed by the Court below, the petitioner has to necessarily reside only in the Special Camp at Tiruchirappalli.

8.The learned counsel for the petitioner submitted that the said Government Order has been passed without following the due process of law and hence, the same cannot be put against the petitioner.

9.The subject matter of challenge in this criminal original petition is not the Government Order that has been passed in G.O(1D) No.428 dated 20.12.2023. hence, the validity or otherwise of this Government order cannot be gone into this petition. If the petitioner is aggrieved by the Government order, the petitioner has to workout her remedy in the manner known to law.

10.In the light of the above discussion, the condition No.2 imposed by the Court below while releasing the petitioner on statutory bail, becomes insignificant in view of the Government Order passed directing the petitioner to reside in the Special Camp at Tiruchirappalli.

11.This criminal original petition is accordingly disposed of in the above terms.



Index: Yes/No
Speaking Order/Non Speaking Order
kp

To

1. Inspector of Police
CCD-II Police Station
Tiruppur District.
2. The Public Prosecutor,
High Court of Madras,
Madras.



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