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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 382/2024**

SH ARUNACHALAM PRAKASH Petitioner

Through: Ms. Manisha Parmar,
Advocate

versus

STATE NCT OF DELHI

THROUGH SHO PS EOW

..... Respondent

Through: Mr. Pradeep Gahalot, APP
with Mr. Vishwas
Miglani, Advocate for the
State with SI Amit Kumar,
PS EOW

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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29.04.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), *inter alia*, seeking setting aside of the order dated 25.10.2023, passed by the learned Link Metropolitan Magistrate ('MM'), South East District, Saket Courts, New Delhi, in FIR No. 108/2020, registered at Police Station EOW, to the extent of the condition imposed on the petitioner to not leave the country without prior permission from the Court. The learned MM had imposed the said condition while allowing the application filed by the petitioner seeking release of the jamatalashi article (passport).
2. The petitioner has also challenged order dated 16.11.2023, passed by the learned Link MM, South East District, Saket Courts, New Delhi whereby the application of the petitioner seeking modification of the order dated 25.10.2023 was dismissed.
3. The learned Additional Public Prosecutor ('APP') for the State admits that once the bail has been granted by the superior



Court, the learned MM while entertaining the application for release of Jamatalashi article could not have imposed a condition that the petitioner shall not leave the country without the prior permission of the Court.

4. The Court has the requisite powers in terms of Sections 437/438/439 of the CrPC to put appropriate conditions while granting bail, which the Court feels appropriate, after considering the facts and circumstances of the case. It is open to the Court to impose such conditions which it deems necessary for securing the presence of the accused in the trial and to prevent the accused from tampering with the evidence.

5. While it is trite law that reasonable conditions can be imposed by the learned MM while releasing the Jamatalashi article, however, when the learned ASJ while granting bail did not deem it necessary to impose any such condition on the petitioner to secure his presence, imposition of such a condition by the learned MM was unnecessary.

6. It is not the case of the prosecution that the application was filed by any of the parties seeking modification of the conditions that were imposed by the learned Additional Sessions Judge ('ASJ') while granting bail to the petitioner by order dated 09.10.2023.

7. In such circumstances, when the prosecution did not seek any addition of condition on the bail of the petitioner, the imposition of such a condition by the learned MM was excessive and in the nature of modifying the order of bail passed by the learned ASJ.

8. As fairly stated by the learned APP, the learned MM fell in error in passing the order dated 25.10.2023 and putting the condition on the petitioner to not leave the country without the



permission of the Court.

9. The learned MM cannot sit in appeal of the order passed by the learned ASJ and could not have modified the order granting bail. The learned ASJ while granting bail had not given liberty to the learned MM to modify the conditions as were imposed by the learned ASJ while granting bail. No procedure has been pointed out or noted, which permitted the learned Magistrate to pass the order dated 25.10.2023.

10. In view of the above, the orders dated 25.10.2023 and 16.11.2023 are set aside.

11. A copy of the order be sent to the learned MM.

AMIT MAHAJAN, J

APRIL 29, 2024

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