



Reserved on : 13.06.2024
Pronounced on : 05.07.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.455 OF 2024

BETWEEN:

MRS. HU XIAOLIN
W/O ANAS AHMED
AGED ABOUT 42 YEARS
RESIDING AT PRESTIGE LAKE SIDE
HABITANT TOWER 11
UNIT NO.11215, 20TH FLOOR
VARTHUR HOBLI, GUNJUR VILLAGE
MARATHALLI, SARJAPURA,
WHITEFIELD MAIN ROAD
BENGALURU – 560 087.

... PETITIONER

(BY SRI SUHAIB FAZEEL M., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY CID
CYBER CRIME POLICE STATION
BENGALURU
REPRESENTED BY HCGP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2. M/S.RAZORPAY SOFTWARE PVT. LTD.,
1ST FLOOR, SJR CYBER, #22,
LASCAR HOSUR ROAD
ADUGODI, BENGALURU – 560 030.
REPRESENTED BY
MR.ABHISHEK ABHINAV ANAND,
RAZORPAY LEGAL.

3. THE UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIR
REPRESENTED BY THE SECRETARY
SOUTH BLOCK,
NIRMAN BHAWAN, CHANAKYA PURI
NEW DELHI – 110 011
REPRESENTED BY
DEPUTY SOLICITOR GENERAL OF INDIA
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R-1;
SRI H SHANTHI BHUSHAN, DSGI FOR R-3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE OR MODIFY THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE ORDER DATED 04.09.2023 IN CR.NO.08/2021 AND OR ANY SUCH RELIEF TO GRANT HER TRAVEL ABROAD WITH OR WITHOUT CONDITIONS AS FIXED BY THIS HONORABLE COURT AND PASS FURTHER ORDERS THAT DEEMS TO FIT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question an order dated 04-09-2023 passed by the Principal City Civil and Sessions Judge, Bangalore in Crime No.8 of 2021, whereby the concerned Court denies travel to the petitioner in modification of bail conditions.

2. Heard Sri Suhaib Fazeel Madar, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Sri H Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.3.

3. Facts, in brief, germane are as follows:-

The petitioner, a lady, is a Chinese national. She comes to India in the year 2017 and is married to one Anas Ahmed, an Indian national currently residing in Bangalore. On certain allegations, a complaint comes to be registered by the 2nd respondent, a payment gateway, Razorpay Software Private Limited

against the husband of the petitioner which becomes a crime in Crime No.8 of 2021 for offences punishable under Section 420 of the IPC and Section 66D of the Information Technology Act, 2008 ('the Act' for short). The crime is registered by the Cyber Crime Police. In connection with registration of crime, the premises of the petitioner and office were searched and seizure of various documents including passport and identity cards takes place. The petitioner comes to be arrested.

4. The petitioner seeks grant of bail from the hands of the Court of Sessions in Criminal Miscellaneous Petition No.5035 of 2021. The petitioner was granted bail but on certain conditions. One of the conditions was that she shall not leave the jurisdiction of the Court without prior permission. The petitioner then prefers another petition before the Court of Sessions in Criminal Miscellaneous No.5863 of 2021 seeking modification of bail conditions as obtaining in Section 439(1)(b) of the Cr.P.C. The petition comes to be allowed in part and bail conditions 2 to 7 were relaxed. But, the condition that she should not leave the jurisdiction of the Court without prior permission was retained.

After about a year, on the ground that the father of the petitioner who is about 80 years old undergoing medical treatment in China and is bedridden, the petitioner moves one more petition before the Court of Sessions in Criminal Miscellaneous No.4710 of 2023 again under Section 439(1)(b) of the Cr.P.C., seeking relaxation of bail conditions, which would be to leave the country from 09-06-2023 to 30-08-2023. This comes to be rejected. Therefore, the petitioner has preferred the subject petition seeking travel permission, to be with her father, who is now 80 years old and is said to be bedridden.

5. The learned counsel appearing for the petitioner would vehemently contend that though crimes are registered all around, in none of the cases the petitioner has suffered any order of ban on travel beyond the shores of the nation. He would submit that even the High Court of Kerala has permitted the petitioner to go to China and come back in two cases where crimes are registered within the jurisdiction of Kerala High Court. He would contend that her travel is imperative, failing which she will lose the opportunity of being with her father in his last days.

6. Per-contra, the learned High Court Government Pleader would refute the submissions to contend that it is not one but 7 crimes are registered against the petitioner and her husband in a scam which is popularly known as 'Power Bank scam'. Therefore, the reason projected by the petitioner should not be adhered to and the petitioner should not be permitted to escape the clutches of law, as once she goes to China, it would be impossible to get her back.

7. The learned Deputy Solicitor General of India representing the 3rd respondent/Ministry of External Affairs, which was directed to be impleaded, as the issue related to immigration, would again vehemently oppose the petition contending that the petitioner is of a doubtful background. She comes to India initially in 2017 on a tourist VISA, gets married and gets the VISA converted to a medical VISA on a fake medical certificate issued by the hospital run by the husband of the petitioner in Kerala. On the basis of the medical certificate the tourist visa is converted to medical visa by the FRRO. Now the petitioner and her husband are accused in several crimes, both in Kerala and Karnataka. It is his submission

that in such cases until the trial gets over, the foreign national should not be permitted to travel back to his/her nation, more so since the petitioner is a Chinese national. He would lay emphasis upon the fact that, foreign nationals in China are not permitted to move out of the country, till conclusion of the trial. He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The petitioner being a Chinese national is not in dispute. She has married an Indian is a matter of record. Both of them get embroiled in several crimes, both in State of Kerala and Karnataka is a matter of record. Two Chinese Nationals come into the shores of the nation on a tourist VISA having validity up to 01-06-2017. After its expiry, it is alleged that they have stayed in the nation illegally. It is on that score against the present petitioner and another, a crime was registered. In a crime before the Kadakkal Police Station, Kerala, they appear to have produced certain

medical certificate evidencing that one of the Chinese nationals had undergone medical treatment. Accordingly, tourist VISA gets strangely converted to medical VISA. This medical certificate is alleged to be forged.

10. The learned Deputy Solicitor General of India has also submitted documents to demonstrate that the petitioner along with other Chinese nationals is involved in a scam "power bank scam", which is being under continuous investigation and in few of the cases, charge sheets are filed. Petitioner being an accused in Crime No.8 of 2021 registered for offence under Section 420 of the IPC and Section 66D of the Act is a matter of record. The petitioner secures bail on certain conditions. Relaxation of those conditions was sought by the petitioner on the ground that she has to visit her country which comes to be rejected. Rejection of it by the Court of Sessions becomes the subject matter of Criminal Petition No.9459 of 2023. A coordinate Bench of this Court, in terms of its order dated 01-12-2023, affirms the rejection. Noticing the said order would become germane for resolution of the present *lis*. The coordinate Bench has held as follows:

"....."

3. FIR in Crime No.8/2021 was registered by Cyber Crime Police Station, Bengaluru, for the offences punishable under Section 420 IPC and Section 66(D) of the Information Technology Act, 2008, on the basis of the complaint lodged by Abhishek Abhinav Anand, authorized representative of the Company known as Razor Pay Software Private Limited. During the course of investigation of the said case, the petitioner herein was arrested and her bail application filed under Section 439 Cr.PC in Crl. Misc. No.5035/2021 was allowed by the Sessions Court on 07.07.2021 subject to the following conditions:

"1. The petitioners shall appear before the court on every date of hearing, unless otherwise exempted for genuine reason.

2. The petitioners shall not leave the jurisdiction of the court without prior permission.

3. The petitioners shall not tamper with the prosecution witnesses in any manner.

4. The petitioners shall surrender their passports to the Investigating Officer or file declaration in the form of affidavits if they are not possessing the passports.

5. The petitioners shall produce address proof of themselves and that of the sureties subject to police verification.

6. The petitioners have to report their change of address if any to the Investigating Officer and to the court.

7. The petitioners shall appear before the Investigating Officer to mark their attendance on First for every month till further orders or until filing of the charge-sheet, whichever is earlier."

3. The applicants in Crl. Misc. No.5035/2021, had thereafter filed Crl. Misc. No.5863/2021 with a prayer to modify condition no.1 and to relax condition nos.4 to 7.

The learned Sessions Judge partly allowed Crl. Misc. No.5863/2021 by order dated 03.08.2021. Condition no.1 was modified and the applicants were directed to execute personal bond and deposit cash of Rs.2,00,000/- each as surety, and condition nos.5 & 7 were ordered to be relaxed. Thereafter, the applicants in Crl. Misc. No.5035/2021 had filed another application in Crl. Misc. No.4710/2023 with a prayer to relax condition no.2 in the order dated 07.07.2021 passed in Crl. Misc. No.5035/2021. The said application was dismissed on 09.06.2023. Therefore, the petitioner is before this Court.

4. Learned Counsel for the petitioner submits that the petitioner is a Chinese national and in view of condition no.2 imposed in Crl. Misc. No.5035/2021, she is not in a position to visit her country. He submits that the entire proceedings in the case has been stayed against the petitioner in W.P.No.10986/2021 by this Court, and therefore, there is no justification on the part of the learned Sessions Judge in rejecting the application filed by the petitioner seeking relaxation of condition no.2.

5. Per contra, learned HCGP has opposed the petition. He submits that condition no.2 does not in any manner come in the way of petitioner visiting her country. Instead of filing necessary application before the Trial Judge seeking necessary permission to travel to her country, she has filed an application to relax condition no.2. If the same is relaxed, there is likelihood of petitioner fleeing from justice. Accordingly, he prays to dismiss the petition.

6. Undisputedly, the petitioner is a foreign national and she allegedly has committed the offences punishable under Section 420 IPC and Section 66(D) of the Information Technology Act, 2008, registered by Cyber Crime Police Station, Bengaluru, in Crime No.8/2021. The learned Sessions Judge while granting bail to the petitioner in Crl. Misc. No.5035/2021 has imposed condition no.2 directing the petitioner not to leave the jurisdiction of the court without prior permission. If the petitioner intends to travel abroad or to leave the jurisdiction of the court, all that she is required, is to make necessary application before the concerned court seeking permission to leave the jurisdiction of the court.

7. As rightly contended by the learned HCGP, since the petitioner is a foreign national, in the event she is allowed to leave the country or leave the jurisdiction of the court unconditionally, there is all likelihood of she fleeing away from justice and it would be highly difficult to secure her presence for the purpose of trial in the case. As per condition no.4, petitioner is required to surrender her passport to the Investigating Officer or file declaration in the form of affidavit if she is not possessing the passport. The said condition is neither relaxed nor modified till date. Therefore, the submission made by the learned Counsel for the petitioner that the petitioner is not in a position to travel to her country in view of condition no.2 in Crl. Misc. No.5035/2021 cannot be appreciated in the absence of any prayer either to modify or relax condition no.4 imposed in Crl. Misc. No.5035/2021.

8. Petitioner had earlier filed similar application before the learned Sessions Judge seeking modification of condition no.1 and to relax condition nos.4 to 7. The said application was allowed in part and condition no.1 was modified and condition nos.5 & 7 was relaxed. Condition no.4 remained undisturbed by the learned Sessions Judge, and in the present application, there is no prayer to relax or modify condition no.4. Therefore, I am of the view that the learned Sessions Judge was fully justified in rejecting the application filed by the petitioner to modify/relax condition no.2 imposed in Crl. Misc. No.5035/2021. I find no error in the said order. Accordingly, I decline to entertain this petition, and the same is, therefore, dismissed."

(Emphasis supplied)

The first attempt to get the bail conditions modified at the hands of the coordinate Bench thus, fails. During the pendency of the petition before the coordinate Bench, the petitioner prefers another

application seeking relaxation of bail conditions, which is again rejected in terms of the order impugned dated 04-09-2023. A new reason is now projected that the father of the petitioner is bedridden and she has to travel to China to be with her father at least for two months. I decline to accede to the request. It is not one, but in 7 crimes the petitioner is an accused. The crimes are so intricate that the investigation is still on and the Police have not yet been able to file the charge sheet, as it is a scam that travels beyond the shores of a particular State. Crimes are registered both in Kerala and Karnataka and if the petitioner is allowed to go out of the shores of the nation for the purpose that is projected, this Court would be permitting the petitioner to flee investigation or trial.

11. The learned Deputy Solicitor General of India seeks to place reliance as to how the Chinese Criminal Code would deal with accused who are foreign nationals to buttress his submission that under the Chinese Criminal Code once a person becomes an accused, he or she will never be permitted to move out of the Chinese shores till the trial gets completed. The Exit and Entry Administration Law of the People's Republic of China is available on

the internet. Foreigners who are involved in unsettled civil cases are not allowed to exit China even upon decision of people's Courts. Foreigners who are in arrears of labour remuneration would not be allowed to exit. On other circumstances in accordance with laws or administrative regulations they would not be allowed to leave the country. Chapter V deals with law relating to Entry and Exit of Aliens. Article 23 thereof reads as follows:

"Article 23 Aliens belonging to any of the following categories shall not be allowed to leave China:

- (1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's Court;***
- (2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; and***
- (3) persons who have committed other acts in violation of Chinese law who have not been dealt with and against whom the competent authorities consider it necessary to institute prosecution."***

(Emphasis supplied)

Those who are barred from leaving China are defendants in criminal cases or criminal suspects *inter alia* and persons who are notified by

a people's Court, persons who have committed acts in violation of Chinese law. Aliens are those who are not Chinese nationals.

12. The petitioner being a Chinese national is undoubtedly aware of the law that prevails in China in treatment to a foreign national or an alien, as described in its laws. If laws in China prohibit such exit of a foreign national under the aforesaid circumstances, laws of India cannot be made flexible on any score whatsoever, as it is a case of a Chinese national who is involved in multiple crimes. Therefore, if petitioner is permitted to move out of the shores of the nation, despite plethora of crimes pending against her, it would become impossible to conclude trial, as it would be permitting her to flee justice and create a dent in the majesty of law. The High Court of Kerala granting permission to travel will not bind this Court to consider the issue on merits, as the order passed by the High Court of Kerala does not indicate the crimes or the practice prevailing in China to other nationals including Indian nationals. Therefore, seeking permission to travel abroad does not merit any consideration in the peculiar facts of this case.

13. For the aforesaid reasons, the petition fails and is accordingly rejected.

bkp
CT: MJ

**Sd/-
JUDGE**