

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CRI-45-2020**

Iiia Aleksandrovich ... Applicant

Vs

State & Anr. ... Respondents

Shri Kamlakant Poulekar, Advocate for the Applicant.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 23rd OCTOBER 2020****P.C. :**

In Crime No.29 of 2019 of Pernem Police Station, the applicant, a Russian, is an accused. It is for the alleged offences under Section 20 (A) (i) of the NDPS Act

2. In fact, the applicant was arrested on 22.2.2019 and was granted bail on 16.3.2019 with conditions. And those conditions have been complied with.

3. Later, the applicant applied to the trial Court for modification of the bail conditions and for the Court's permission to leave the country. But through its order, dated 21.7.2020, the trial Court dismissed that application. Then, the applicant has filed this Criminal Misc. Application.

4. Heard Shri Kamlakant Poulekar, the learned counsel for the applicant, and Shri Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

5. Shri K. Poulekar, the learned counsel for the applicant, has submitted that the applicant is a legitimate tourist with proper travel documents. According to him, he has come to Goa first time. Now, with

the uncertainty about when the trial is likely to conclude, it is tough for the applicant, a citizen of Russia, to stay here indefinitely without any gainful employment. He is said to have been living on financial help from his grandmother in Russia.

6. To elaborate, Shri K.Poulekar submits that even the chemical analysis report has not so far been received, though the alleged offence took place close to one year ago. Therefore, reminding the Court that even a foreign national can have his fundamental rights intact, Shri Poulekar wants this Court to allow the application. He repeatedly assured the Court that the applicant would provide all the details about his permanent address and also the place of his stay in Russia so that whenever the trial Court requires his presence during trial, he will come back to India.

7. In response, Shri Faldessai, the learned Additional Public Prosecutor, has submitted that it has become a regular phenomenon that most foreign nationals facing criminal charges have never come back to face trial once they were allowed to leave the country. In this context, he has drawn my attention to an application pending before a Division Bench of this Court. It is on the issue of the foreign undertrials not returning to India to face the trial. According to Shri Faldessai, this Court has taken that case on file as a Suo Motu PIL and passed detailed orders about the steps the authorities concerned should be taking to curb this trend. Therefore, Shri Faldessai has opposed the application.

8. In reply, Shri Poulekar has submitted that the case before the Division Bench involves the foreigners who entered the country without proper travel documents and left the country's borders without the Court's leave, abusing the bail. According to him, the applicant's case cannot be likened to the issue raised in that Suo Motu Public Interest Litigation.

9. When I have proposed that the trial Court could be directed to conduct the trial expeditiously and dispose of the case at the earliest, Shri

Poulekar has pointed out the practical difficulty the trial Court faces. He has, first, cited the delay in FSL report; second, reminded me of the docket pressure the trial Court faces; and third, pointed to the pandemic situation. Then I have proposed that there ought to be some incentive for the applicant to come back to India and face the trial. In that context, Shri Poulekar has agreed, on instructions, that the applicant is willing to provide cash surety to a reasonable extent as this Court may fix. Shri Poulekar has submitted that already the applicant has provided one local surety with ₹100,000/-. In addition to that, the applicant is willing to provide cash surety of ₹3,000/- more. Besides, the learned counsel for the applicant on instructions informs the Court that the applicant undertakes to come back to India in six months from the date of his leaving the country. On his coming back, he should report to the Investigating Agency about his arrival.

10. Under these circumstances, I allow the bail application on the following conditions.

ORDER

- (i) The bail condition no.2 of the Order dated 16.3.2019 is modified subject to the condition of deposit of ₹3.00 lakhs.
- (ii) The applicant is permitted to leave the country on his providing cash security for ₹3.00 lakh to the satisfaction of the learned District & Sessions Judge-I, Mapusa; it is in addition to the surety offered when he had been granted bail.
- (iii) The applicant should provide to the trial Court the complete address and all other relevant details of his stay in Russia including his contact details, the employment details—once he secures any gainful employment there.
- (iv) The applicant shall undertake to return to India whenever the trial Court requires his presence.

(v) This Miscellaneous Application stands disposed of.

DAMA SESHADRI NAIDU, J.

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