

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945

WP(C) NO. 42444 OF 2023

PETITIONER:

EDWIN ANDREW MINIHAN

BY ADVS.
M.S.SAJEEV KUMAR
LAKSHMI S KUMAR
A.N.JYOTHILEKSHMI

RESPONDENTS:

- 1 UNION OF INDIA
MINISTRY OF HOME AFFAIRS, NDCC-II BUILDING, JAISINGH
ROAD, NEW DELHI-110001. REPRESENTED BY ITS SECRETARY, PIN
- 110001
- 2 UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS, SOUTH BLOCK, 74B, NEW
DELHI-110011. REPRESENTED BY ITS SECRETARY, PIN - 110011
- 3 FOREIGNERS REGIONAL REGISTRATION OFFICE
2ND FLOOR, AIRLINE BUILDINGS, COCHIN INTERNATIONAL
AIRPORT, NEDUMBASSERY, PIN-683111, REPRESENTED BY
FOREIGNERS REGIONAL REGISTRATION OFFICER., PIN - 683111
- 4 ASSISTANT COMMISSIONER OF CUSTOMS
PROSECUTION CELL, CUSTOM HOUSE, COCHIN-682009.
BY ADV ADV. P.G. JAYASHANKAR PGJ

SRI.SREELAL N.WARRIER, SC
SRI.S.MANU DSGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

The petitioner is stated to be an Irish citizen, who was involved in a case registered by the Customs, alleging offences under Sections 132 and 135 of the Customs Act, 1962 ('Act' for short). He says that, however, he was acquitted honourably by the Court of the Additional Chief Judicial Magistrate (Economic Offence) Ernakulam, as is evident from Ext.P1; which has been confirmed by this Court, through Ext.P2 judgment in CrI.Appeal No.1202/2019, filed by the Assistant Commissioner of Customs, Kochi.

2. The petitioner adds that, in fact, when his passport was ordered to be released by the learned Magistrate, consequent to the afore said judgment, it was challenged by the Department of Customs, impelling CrI.M.C.No.4257/2019 before

this Court, which also has been dismissed, vide Ext.P3; and therefore, that as matters now stand, there are no criminal charges, in any manner whatsoever, against him, he thus being at liberty to travel back home. He says that, however, in order to frustrate his rights stated above, the 3rd respondent is refusing to issue necessary Exit Permit; and therefore, prays that the said Authority be directed to do so, within a time frame to be fixed by this Court.

3. Sri.Saiby Jose Kidangoor - learned counsel for the petitioner, added to the afore submissions of the petitioner, saying that, there is an imminent requirement for his client to travel to his home country because, his 83 year old mother is seriously ill on account of advanced Atrial Fibrillation and other cardiac related issues, which factum is established through Ext.P4 Medical Certificate. He submitted

that any further delay in allowing his client to travel, would cause him irreparable prejudice and detriment, should something happen to his mother.

4. Sri.Saiby Jose Kidangoor then argued that, the 3rd respondent, in fact, has not furnished his client any written communique why he cannot be allowed to travel; but that he has been informed orally, that they require a No Objection Certificate ('NOC') from the 4th respondent - Assistant Commissioner of Customs, for the issuance of an Exit Permit. He, therefore, prayed that the 4th respondent, or such other competent Authority of the Department of Customs, be directed to forthwith issue to the 3rd respondent the afore said certificate.

5. Sri.P.V.Jayasankar - learned Standing Counsel for the 4th respondent, submitted that, though his client admits Exts.P1 to P4 orders,

it would be of no consequence to the petitioner because, they intend to file a Special Leave Petition before the Hon'ble Supreme Court challenging Ext.P3. He added that, therefore, if the petitioner is now allowed to travel outside India, it would be impossible to secure his presence, if the Hon'ble Supreme Court is to eventually find against him, particularly because there is no Extradition Treaty between the Republic of Ireland and our country. He, therefore, prayed that this writ petition be dismissed.

6. Sri.S.Manu - learned Deputy Solicitor General of India, appearing for respondents 1 to 3, submitted that clients are only acting as per law and answering the requisition of the 4th respondent - Assistant Commissioner of Customs. He added that, therefore, they will abide by any

directions to be issued by this Court in this writ petition.

7. When I consider and evaluate the afore dialectical positions, it is evident that, at the present moment of time, there are no criminal charges against the petitioner, nor is he required for the purpose of answering any penal imputation. He has been acquitted by at least two Courts; though, the stand of the 4th respondent is that they intend to challenge Ext.P3 judgment before the Hon'ble Supreme Court of India, through a Special Leave Petition.

8. However, it must be borne in mind that Ext.P2 judgment was delivered on 04.12.2023 and normally, the 4th respondent would obtain 60 or 90 days - depending upon whether they had requested for leave before this Court - to challenge the same. But, during this time, it is evident that the petitioner remains exonerated

and it would be not within the design of the forensic scheme that he be detained without any viable reason. The allegations against him have already been tested before two courts, including before this Court; and I, therefore, cannot find any reason to confine him to detention, or to refuse him permission to travel abroad, especially when he says that his mother is critically ailing and perhaps would be too late, if is he not allowed to return soon.

9. That apart, Sri, Saiby Jose Kidangoor - learned counsel for the petitioner, further submit that his client, in fact, had travelled to Ireland atleast twice during the time the legal proceedings were pending against him; and that his intention was never to avoid such processes, but to answer it honourably and get acquitted, which he has been able to do as the afore admitted facts would establish.

Pertinently, these assertions were not opposed by the respondents.

10. In the afore circumstances and because this Court cannot find the stand of the 4th respondent - that the petitioner should continue to be detained, solely because they intend to file a Special Leave Petition against Ext.P2 judgment, to be tenable, I am certain that he is entitled to relief.

In the afore circumstances and resultantly, this writ petition is allowed; and the 3rd respondent is directed to take necessary steps to allow the petitioner to travel to Ireland as per law and subject to all other statutory and imperative requirements being satisfied, without any avoidable delay, but not later than two weeks from the date of receipt of a copy of this judgment.

Needless to say, while complying with the afore directions, the 3rd respondent will be at full liberty to seek all germane and necessary details of the petitioner, including his place of residence in Ireland and such other; which he will be bound to furnish.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

SAS

APPENDIX OF WP(C) 42444/2023

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 26-03-2019 IN CC NO.411/2016 PASSED BY THE HON'BLE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (ECONOMIC OFFENCES) AT ERNAKULAM.
- Exhibit P2 TRUE COPY OF THE JUDGMENT IN CRL.APPEAL NO.1202/2019 DATED 04-12-2023, PASSED BY THIS HON'BLE COURT
- Exhibit P3 TRUE COPY OF THE ORDER DATED 04-12-2023 IN CRL.M.C NO: NO.4257/2019, PASSED BY THIS HON'BLE COURT
- Exhibit P4 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 19-06-2023, ISSUED BY DR. MARK WALSH
- Exhibit P5 TRUE COPY OF THE CRL.MA NO.4 OF 2023 DATED 24-06-2023 IN CRL.MC NO.4257/2019, FILED BY THE PETITIONER BEFORE THIS HON'BLE COURT
- Exhibit P6 TRUE COPY OF THE E-APPLICATION DATED 20-10-2023 SUBMITTED BY THE PETITIONER, BEFORE THE 3RD RESPONDENT
- Exhibit P7 TRUE COPY OF THE APPLICATION DATED 12-12-2023 SUBMITTED BY THE PETITIONER THROUGH E-MAIL, BEFORE THE 3RD RESPONDENT
- Exhibit P8 TRUE COPY OF THE INTERIM ORDER IN CRL.M.A NO.1/2022 DATED 10-08-2022
- Exhibit P9 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 10-01-2024, ISSUED BY DR. MARK WALSH