

(2021) 06 SHI CK 0050

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.871 Of 2021

Carolyn Kay Martin

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

Foreigners Act, 1946 — Section 14

Code Of Criminal Procedure, 1973 — Section 173(2), 439

Citation : (2021) 06 SHI CK 0050

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Ravinder Singh Chandel, Anil Jaswal, Manoj Bagga

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. For violation of Section 14 of the Foreigners Act 1946, the petitioner is in custody w.e.f. 13.04.2021 in FIR No.14/2021, dated 13.04.2021,

registered at Police Station Mcleodganj, Dharamshala, District Kangra, H.P. She is seeking regular bail in the instant petition.

2. Petitioner is a citizen of Unites States of America. On 13.04.2021, she was questioned by the Police Authorities and asked to show her Passport

and Visa. Petitioner could not produce her Passport & Visa, though stated that her passport bears No. US452096468 and her date of birth was

26.10.1963. Petitioner also stated that she had lost her Passport about two years ago. Therefore, FIR was registered against her on 13.04.2021 under

Section 14 of the Foreigners Act.

3. As per status report, during investigation, petitioner disclosed that she had opened a bank account in Punjab National Bank Mcleodganj,

Dharamashala on 13.12.2016 and at that time, she had deposited a photocopy of her Passport and Visa. The police thereafter obtained the photocopy

of the Passport & Visa deposited by the petitioner with the bank, which reflected that she was holder of a passport No. US452096468 valid till

09.03.2021 and Visa No.AP1065155 valid till 04.08.2019.

3. Heard learned counsel for the parties.

Learned counsel for the petitioner submitted that petitioner is aged around 58 years and suffers from Alzheimer & Bipolar disorder. She is not

involved in any criminal activity per se. Learned counsel prayed for her release and stated that petitioner will abide by all the conditions, which may be

imposed upon her in case of grant of bail and that she will not influence the prosecution witnesses or tamper with the prosecution evidence in any

manner.

Learned Additional Advocate General, while opposing the bail plea stated that in case the Court is inclined to grant bail to the petitioner, then the same

be made subject to stringent conditions, including a condition that the petitioner will report at the concerned police station once in every fortnight.

4. The status report does not indicate any criminal history of the petitioner. Regarding the genuineness of her Passport and Visa, the matter is stated to

be under correspondence with the concerned authorities. On 31.05.2021, this Court had specifically directed the State to file a fresh status report w.r.t

genuineness of petitioner's Passport & Visa. Apart from reiterating that the matter is still under correspondence with the concerned authorities,

nothing further has been indicated in the fresh status report about the genuineness of the Passport.

Learned counsel for the petitioner has placed on record a photocopy of the certificate from the Embassy of United States of America Consular

Section New Delhi, India, dated June 02, 2021 issued by the Consular to the effect that "this is to certify that our records show that Ms. Carolyn

Kay Martin (Date and place of birth October 26, 1963, Tennessee, USA) was issued U.S. Passport number 452096468 on March 10, 2011 by the

U.S Department of State. The passport expired on March 09, 2021. The certificate is taken on record. The Apex Court in (2018) 3 SCC 187 titled

Lachhman Dass Vs. Resham Chand Kalere and Another has held that in reference to Section 439 Cr.P.C, all accused are same in the eyes of law

irrespective of their nationality.

Petitioner is in custody for the last more than two months. Respondent has already filed police report under Section 173(2) of the Code of Criminal

Procedure on 03.05.2021 before the Court of competent jurisdiction for violation of Section 14 of the Foreigners Act. No other offence is said to have

been committed by the petitioner. Respondent can certainly investigate into the genuineness of petitioner's Passport and Visa. However, in the

facts of the case, pending stretched investigation without any regard to time, for determining the genuineness of her Passport & Visa, the petitioner

cannot be incarcerated for an indefinite period. A photocopy of the Passport & Visa is with the respondent, which as per certificate dated June 02,

2021 produced by learned counsel for the petitioner is genuine, though its validity period expired on 09.03.2021.

For the aforesaid reasons, petitioner has made out a case for grant of bail. Accordingly, the instant petition is allowed. Petitioner is ordered to be

released on bail in the aforesaid FIR on her furnishing personal bond in the sum of Rs. 5 lacs with two local sureties of Rs.25,000/ each to the

satisfaction of the learned trial Court having jurisdiction over the concerned Police Station. In the alternative, the petitioner may furnish aforesaid

personal bond and fixed deposit for Rs. Five lacs only (INR 5,00,000/), made in favour of official account of the learned Trial Court as per direction

of learned trial Court.

a) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g.,

Bank of America, Chase, HSBC, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty

of the interest reverting to the linked account.

b) Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.

c) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

d) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get

the online liquidation disabled.

e) The petitioner or her Advocate shall inform at the earliest to the concerned

branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.

f) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.

g) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa.

h) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437A CrPC, 1973, or until discharged by substitution as the case may be.

Further, this bail is being granted subject to the following conditions:

(i) Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. However, she shall not be called in the police station before 9.00A.M. and after 5.00 P.M.

(ii). Petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.

(iii). Petitioner will not leave India without prior permission of the trial Court.

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(iv). Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v). In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vi). Petitioner shall inform the Station House Officer of the concerned police station about her place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of her Telephone Numbers, E-mail, PAN Card, if any, Bank Account Number, if any. Additionally, petitioner will inform the concerned Police Authorities all updates and developments about her

Passport and Visa.

(vii) Petitioner is directed to report to the concerned Police Station once in a fortnight.

In case of violation of any of the terms & conditions of the bail, respondent's State shall be at liberty to move appropriate application for cancellation of

the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an

opinion on the merits of the matter. Any observation hereinabove shall not be taken as an expression on merits of the case and learned Trial Court

shall decide the matter uninfluenced by any of observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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