

(2010) 03 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 222 of 2010

Imtizor Imamova

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Foreigners Act, 1946 — Section 3
Immoral Traffic (Prevention) Act, 1956 — Section 5
Penal Code, 1860 (IPC) — Section 120, 323, 34, 342, 376

Citation : (2010) 2 ShimLC 63

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The petitioner is a foreigner, resident of Uzbekistan. She alongwith her accomplices, was found loitering in the area of Manaii. Police apprehended them on 27th January, 2008 as they were not having valid passport and visa. Surprisingly, on 5th February, 2008 they were released on bail by the Judicial Magistrate, Manaii, more specifically when they were foreigners and were not having valid documents.

2. Challan was presented in the Court. They were present when charge-sheeted, but thereafter none of them put in appearance and were absconding.

3. Ultimately it came to the notice of the authorities that the petitioner was lodged in Tihar Jail consequent upon the registration of FIR No. 401 of 2008 dated 17th December, 2008, under Sections 376, 386, 420, 323, 342, 120-B read with Section 34 of the Indian Penal Code and also u/s 5 of Immoral Trafficking Prevention Act, Police Station, Defence Colony, District South Delhi.

4. Production warrants were issued by the Judicial Magistrate, Manali. Pursuant to that, she was produced and now she is lodged in judicial lock-up. The case is fixed for 19th April, 2010 for the service of other co-accused. The bail was denied by the learned Sessions Judge, Kullu on the ground that she failed to abide by the conditions imposed by the learned trial Court while releasing her on

bail.

5. It is quite shocking that when the petitioner and other co-accused were found without any valid passport and visa, why the learned trial Court granted bail to them because every minute stay of a "foreigner" within the territory of the country is a recurring offence. On examining the record, while granting bail to the petitioner and other co-accused, the learned Magistrate was oblivious of the provisions of the Foreigners Act, 1946 and the order passed u/s 3 of the Foreigners Order, 1948 and the Rules framed thereunder.

6. No foreigner has any right, as such, to enter or remain in India, as he/she likes and his entry into and stay in this country are regulated by the provisions of the Foreigners Act, 1946 and Rules made thereunder, for a variety of reasons.

7. A visa issued to a foreigner is in the nature of a limited leave to enter in this country or stay there, for a duration controlled and limited by terms of the visa issued. Such leave also carries with it certain responsibilities, obligations and discipline and the machinery by which such leave to enter or remain is regulated, in the larger interest of the country cannot be lightly tampered with, particularly by foisting anything that would destroy that machinery.

8. The learned Judicial Magistrate could not have equipped them with a license by passing an order of bail to stay in India without any passport and valid visa. Rather the Judicial Magistrate, instead of granting bail, should have taken the case on day-to-day basis and decide the case on merits. In case the accused having found to be not guilty or guilty of the offence, they shall have to be ordered to be deported after the completion of the sentence, if any imposed.

9. In view of the aforesaid circumstances, the bail is not available to the petitioner, therefore, dismissed.

10. The learned trial Court is hereby directed to finally dispose of the matter against the petitioner as it being an individual offence, in accordance with law at the earliest by segregating her Challan.

11. The copy of this order be sent to the learned Sessions Judge, Kullu and the learned Judicial Magistrate 1st Class, Manali, for information and necessary action.