

**Misc. No.733/2020 (Main Case Criminal Revision No.881/2019
Aida Askerbeova & Anr. vs. Customs Department
File No.VIII/AP/10/P&I/2566-A/2019**

30.05.2020

Present : Sh. Sajan Shankar Prasad, Ld. counsel for the applicants/revisionists through VC.
Sh. Pramod Bahuguna, Ld. Special PP for non-applicant/respondent (Customs) through VC.

Vide order no.5550-5634/NDD/2020 dated 22.05.2020 of Ld. District & Sessions Judge, Patiala House Court, New Delhi District, New Delhi, the undersigned has been deputed for duty today in pursuance to the directions of Hon'ble High Court of Delhi vide order no.R-305/RG/DHC/2020 dated 21.05.2020, to combat the pandemic of COVID 19.

As per directions of the Hon'ble High Court of Delhi to adjourn matters en-bloc, date of hearing was given in this case for 04.07.2020.

File was taken up on application seeking urgent hearing of the revision petition pending before this court moved on behalf of the applicants/accused persons. The matter was listed by duty Judge Sh. Ashutosh Kumar, ASJ/Special Court POCSO, Patiala House Courts, New Delhi District for arguments for today.

Arguments have been heard on the revision petition.

Vide separate order dictated and announced in open Court, the revision petition has been dismissed.

The date already fixed i.e. 04.07.2020 stands cancelled.

TCR be sent back alongwith a copy of the order.

Revision file be consigned to Record Room.


(Parveen Singh)
ASJ-03/NDD/PHC/New Delhi
30.05.2020

IN THE COURT OF SH. PARVEEN SINGH, ASJ-03, NEW DELHI
DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI

CR No. 881/2019

Aida Askebeova
and
Begaim Akynova
R/o Kyrgyz Republic

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Revisionists.

Vs.

Customs, New Delhi
Through its SPP.

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Respondent.

Date of institution : 18.12.2019

Date on which order reserved : 30.05.2020

Date of order : 30.05.2020

ORDER

1. The present revision petition has been preferred by the revisionista against the impugned order dated 10.12.2019 of Ld. CMM, Patiala House Courts, New Delhi, whereby the permission to go abroad as sought by the revisionists had been declined.

2. The brief facts are that as per the case of the

prosecution, on 13.09.2019, the revisionists were intercepted at IGI Airport, New Delhi. They had arrived from Almaty. Approximately 3150 gms of gold was recovered from possession of the revisionist Aida Askebeova and 1875 gms of gold was recovered from possession of other traveller Begaim Akynova and the consolidated recovery as per the Customs Department was 5025 gms which was valued at Rs.1,91,74,395/-. Thereafter, the applicant was enlarged on bail by the order of Ld. CMM, Patiala House Courts, New Delhi, however with condition, that she would not travel abroad without permission of the Trial Court. The revisionists applied to the Trial Court to travel abroad and on that application impugned order dated 10.12.2019 was passed.

3. The present revision petition has been filed on the ground that the impugned order was perverse illegal and bad in the eyes of law and that there was an apparent error on the fact and law. It is further submitted that the Trial Court failed to appreciate that the applicant/accused is a foreign national having clean antecedents who has never evaded any condition imposed by any authority. The Trial Court failed to appreciate that the applicant is the sole bread earner of her family comprising of old aged parents and minor children to support. Being foreigner, she has no source of income in this country and since many months she is at the mercy of others. It has

been contended that the Trial Court has failed to appreciate that even if the case of the respondent is believed, no offence u/s 135 of the Customs Act is made out as statement of the applicant was forcibly taken. The Trial Court has also failed to appreciate that the revisionists waited till finalisation of the investigation. Presently, show cause notice is being finalised and it will take one more year for the proceedings which again will not be final and will be challengeable. Hence, the present revision petition praying setting aside of order dated 10.12.2019 and allowing the revisionists to travel to home town in Kyrgyz Republic.

4. Reply to the revision petition was filed by the respondent i.e. Customs Department and in the reply, it was submitted that the order of Ld. CMM was not a final order and being an interlocutory order in nature, the revision petition is not maintainable against that order. Further ground was taken that the revisionists are foreign nationals and there is every chance of them absconding and fleeing from process of justice. If passports of the revisionists are released to them, they will leave the country and it will be very difficult to ensure their presence for completing investigation and for launching the prosecution and other Quasi-Judicial proceedings.

5. Today, arguments at length have been heard from both the sides. Ld. counsel for the revisionist has contended

that the order passed by Ld. CMM is not an interlocutory order but as it has finally decided the rights of the revisionist to travel abroad it amounts to a final order and thus, the revision petition is maintainable. In this regard, he has relied upon the judgment of Hon'ble Supreme Court in **Mohit @ Sonu & another. vs. State of Uttar Pradesh & another, (2013) 7 SCC 789**. He has further contended that the concern raised by the Customs department about securing presence of the present applicants has been answered by the concerned embassy, who has undertaken to ensure the presence of the applicant in India as and when required and therefore, no purpose would be served by denying the applicants a right to travel to her family in present circumstances. It is further submitted that the grant of permission to the accused for travelling abroad is for treatment of her son whose health is progressively becoming worse. Therefore, it is her basic right to travel under Article 14 of the Constitution.

6. Per Contra, Ld. Special PP for Customs has contended that the order of Ld. CMM was interlocutory in nature and cannot be challenged by way of a revision petition. He has further contended that the undertaking given by the embassy is of no consequence as embassies are not subject to Indian laws and this undertaking cannot be enforced. Also there is no extradition treaty with Kyrgistan. It is further

contended that in the present revision petition one of the grounds taken is with regard to illness of son of accused Aida Askerbeova. However, no urgency or ground has been shown with regard to other revisionist. Therefore, this joint revision petition is otherwise not maintainable.

7. I have given my considered thought to the rival contentions. With regard to primary contention of Customs department, that the revision petition is not maintainable as the impugned order was an interlocutory order; I find that vide impugned order of Ld. CMM, the right of the revisionists to travel to their home had been finally decided. The bare reading of the impugned order would reflect that it had been passed in view of the fact that the revisionists were foreign nationals and investigation was in progress. There is nothing in this order to suggest that the order was temporary in nature or for a certain period. Thus, the right of the revisionists as far as it concerns about returning to their home has been finally decided and thus, I find that the revision petition is maintainable.

8. Coming to the merits of the case, there are two fold contentions. One is the ground that is taken for returning home. Interestingly, the revision petition has been filed by both the revisionists but it is only in respect of revisionist Aida Askerbeova that a ground or a necessity to travel abroad has

been reflected. The second contention is that the apprehension, that the revisionist may not return can be taken care of by an undertaking of the embassy, the photocopy of which has been placed on record, that the embassy shall ensure presence of the revisionist Aida Askerbeova before the Court or Customs authority as and when required.

9. Therefore, as regards revisionist Begaim Akynova, there is no ground which has been shown which would necessitate her travelling abroad. Coming to the revisionist Aida Askerbeova, the ground of illness of her son has been shown. However, she is a foreign national and the apprehension of the Customs department that if allowed to leave the country she will not return cannot be said to be unfounded. In order to dispel this apprehension, the revisionists has filed an undertaking from the embassy of Republic of Kyrgyzstan and heavily relied upon it. However, it has been informed that India does not have any extradition treaty with Republic of Kyrgyzstan. With regard to the undertaking of the embassy, I find that firstly the embassy is not amenable to the jurisdiction of the Courts in India and therefore, the Court will not be able to enforce any undertaking given by the embassy of Republic of Kyrgyzstan. Secondly, once the applicant/revisionist leaves the shores of India and reaches Kyrgyzstan, she will have legal rights as per the laws of

that country and no undertaking given by the embassy could be enforceable against her. In these circumstances I find, that if granted permission, the revisionists after leaving India may not return to join investigation or face prosecution or Quasi-Judicial proceedings as the case may be and the absence of extradition treaty shall make it further difficult to ensure her presence. I do not find any reason to interfere with the impugned order. Revision petition is accordingly dismissed.

TCR be sent back alongwith a copy of the order.

Copy of the order be also uploaded on Court website.

Revision file be consigned to Record Room.

**Announced in open
court on 30.05.2020.**


(Parveen Singh)
ASJ-03/NDD/PHC/New Delhi
30.05.2020