

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1529/2020

Judgment reserved on : 22.07.2020

Date of decision: 31.08.2020

AIDA ASKERBEKOVA, holder of Kyrgyzstan Passport No. AC 3167256 & BEGAIM AKYNOVA, holder of Kazakhstan Passport No. 8622501

.....Petitioners

Through: Mr.Sajan Shankar Prasad & Mr.Rohit Kumar Pandey, Advocates.

Versus

DEPARTMENT OF CUSTOMS

.....Respondent

Through: Mr.Satish Aggarwala, SSC with Mr.Gagan Vaswani, Advocate. Ulybek Tulekin, Head of Consular Section, Embassy of Kazakhstan.

**CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA**

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners i.e. Ms. Aida Askerbekova, holder of Kyrgyzstan Passport No. AC 3167256 & Begaim Akynova holder of Kazakhstan Passport No. 8622501, both currently in Delhi vide the

present petition under Section 482 of the Cr.P.C., 1973 assails the order dated 30.05.2020 of the learned ASJ-03/NDD/PHC/New Delhi in CR No. 881/2019 vide which the said revision petition filed by the petitioners herein as revisionists against the impugned order dated 10.12.2019 of the learned CMM, Patiala House Courts, New Delhi, declining the prayer of the petitioners herein seeking permission to go abroad to their home town in Kyrgyz Republic,- was disallowed whilst upholding the order dated 10.12.2019.

2. The allegations levelled against the petitioners by the Customs Authority are to the effect that they were intercepted on 13.09.2019 at the IGI Airport, New Delhi, having arrived from Almaty and 3150 gms of gold was recovered from the possession of the petitioner no.1 and 1875 gms of gold was recovered from the possession of the petitioner no.2 with the consolidated recovery as per the Customs Department being 5025 gms which was valued at Rs.1,91,74,395/-. The petitioners were enlarged on bail vide the order of the Id. CMM, Patiala House Courts, New Delhi, with the condition imposed that they would not travel abroad without the permission of the Trial Court. The petitioners herein moved an application before the learned Trial Court to travel abroad which was declined vide order dated 10.12.2019 of the learned CMM, Patiala House Courts, New Delhi observing to the effect:-

“These are two applications moved on behalf of applicants for permission to go abroad i.e. their home at Kyrgyz Republic.

Arguments have already been heard.

Reply has already been filed by the department opposing the applications on the ground that applicants are foreign nationals and they are required for further investigation which is still underway. It is further submitted that there is every possibility that accused person may indulged in similar type of smuggling activities if they are granted permission to go abroad.

I have considered the arguments of both the parties.

In view of submissions made and the fact that the applicants/accused are foreign nationals and investigation is going on, this application is dismissed.

Applications stand disposed off. Copy of this order be given Dasti.”

3. The petitioners herein being aggrieved by the order dated 10.12.2019 of the learned CMM, PHC, New Delhi filed CR No.881/2019 before the Sessions Court. Vide the impugned order dated 30.05.2020 in CR No.881/2019 whilst holding the revision petition to be maintainable observing to the effect that vide the impugned order of the learned CMM, PHC, New Delhi, the right of the revisionists to travel to their home had been finally decided, it was however, observed vide paragraphs 8 & 9 of the impugned order to the effect:-

“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.”

4. Vide the present petition, it has been submitted that the son of the petitioner no.1 is in a state of medical emergency and that the petitioners are completely impoverished and forced to live life in a

state of great physical or mental distress and discomfort and that they may be allowed to travel back to their home for a particular period subject to conditions as the Court may deem fit to impose. It has been submitted further on behalf of the petitioner no.1 that the toddler son of the petitioner no.1 is scheduled to undergo a medical surgery, which he has been advised to undergo as soon as possible and that the petitioner no.1 is a single mother and is the sole bread earner in her family and that there is no one else in her family who can take care of her son's health during the medical emergency.

5. It has been submitted on behalf of the petitioner no.1 that the grant of permission to the petitioner no.1 for traveling abroad for the cure of her son's ill health which is becoming progressively worse, is a basic right to which she is entitled in terms of Article 14 & 21 of the Constitution of India. The medical documents in relation to the petitioner no.1 son's namely Kanybekov Rayan reads to the effect:-

“On the left, the parotid gland is enlarged, nonhomogenous, with multiple hypoechoic inclusions in size 31,7x16,9 mm; lymph gland 7,5x4,1 mm; 11,8x6,5; 12,3x5,8 mm; 11,8x5,1 mm; Glandula submandibularis-nonhomogenous, in size 23,4x21,1 mm.

In submandibular space, lymph gland 10,4x6,3 mm; 11,7x4,2 mm”.

The said document is the translation from Russian into English by the translation agency “LingvaMaster” and another sickness certificate issued by Physician namely Osmonova K. dated 25.01.2020 in relation to the child reads to the effect:-

“SICKNESS CERTIFICATE

*This certificate is issued to **KANYBEKOV RAYAN**, date of birth **01.05.2018**, living at the address: **Severnaya 13**, that he actually **urgently needs surgical treatment in an emergency order**.*

DS: INGUINAL CONSTRICTED HERNIA AT THE LEFT
Diagnosis

He have (has)(sic) not been in touch with contagious patients.”

this document too, is the translation from Russian into English by the translation agency “LingvaMaster”.

6. Placed on record on behalf of the petitioners is an undertaking dated 06.03.2020 which undertaking was submitted on behalf of the petitioner before the learned District & Sessions Court, PHC, New Delhi which states to the effect:-

“Subject:- Undertaking on behalf of Embassy of Kyrgyzstan

MOST HUMBL Y SUBMITTED

1. That Ms. Aida Askarbekova holder of Kyrgyz Republic passport No. AC3167256 issued by SRS on 09.02.2018, address: Kyrgyz Republic, Bishkek, Sokuluk district, Novopavlovka village, Sevemaya Str. 13, was served with the show-cause notice dated 04.02.2020 by the revered office of the commissioner of Customs (Airport & General). We have been also aware about her pending case for the same cause in the Patiala House Court, New Delhi.

2. Further, the Hon'ble Court of Patiala House Court was pleased to grant bail to Ms. Aida Askarbekova. We have perused the said bail order accordingly.

3. That Ms. Aida Askarbekova sought permission from this Hon'ble Court to travel her home due to urgency, as her toddler son health is in precarious state and he has been advised to undergo a medical surgery as soon as possible. We have perused the medical documents of his son as well.

4. That the said Hon'ble Court asked for the undertaking from us that Ms. Aida Askarbekova will come back as and when required by the Hon'ble Court.

5. That we have enquired and subsequently got acquiesced with the fact that there is no one in her family who could take care of her critically son. Further her presence is required unavoidably to ensure her son's good health and surgery.

6. In view of the above fact we undertake that under the circumstance M. Aida Askarbekova may get a leave from this Hon'ble Court to travel (to) her home, we shall ensure her presence in India as and when required by the Courts or Custom Department.”,

the Embassy of Kyrgyzstan has thus vouched for the correctness of the medical documents of the son of the petitioner no.1 and also of the aspects that the son of the petitioner no.1 requires a medical surgery as soon as possible and that apart from the petitioner no.1, there is no one in the family to take care of her critically ill son and that her presence is thus, required unavoidably to ensure her son's good health and surgery.

7. Vide order dated 25.06.2020, the Department of Customs i.e. the respondent herein was directed to submit a verification report in

relation to the medical documents as well as the certificate issued by the Kyrgyz Republic referred to hereinabove as the undertaking submitted on behalf of the Embassy of Kyrgyzstan.

8. The Customs Authority has placed on record a letter dated 21.07.2020 from the Director CPV, Ministry of External Affairs, PHC, New Delhi addressed to the Additional Commissioner of Customs, IGI Airport, T-3, New Delhi to the effect:-

“No. Dir(CPV)/551/1/2020

Dated: 21.7.2020

To,

*Additional Commissioner of Customs
(IGI Airport, T-3), New Delhi*

Sir,

Subject : Verification of Medical Documents submitted in the Delhi High court in the case titled Mrs Aida Askerbekova & Ors-reg.

Please refer to your letter No. VIII(AP)10/P&I/2566-A/Arrival/2019 dated 17.07.2020 on the subject mentioned above.

2. This Ministry has got confirmation of the attached undertaking by the Embassy of Kyrgyz Republic and the Certificate issued by the Embassy of Kazakhstan, from their respective diplomatic Missions in New Delhi (copies of confirmation attached). The undersigned has also discussed the matter over phone with the concerned diplomats in these Missions.

3. The undertaking/certificate have been issued after the internal process of verifying the genuineness of the medical documents involved. Since the diplomatic Missions represent their respective sovereign States in India, their verification/confirmation, in this

Ministry's view, would be sufficient to establish genuineness of any document originated in their respective countries.”

along with which is a communication dated 21.07.2020 from the Attaché (Consul), Embassy of Kyrgyz Republic in India addressed to the Director, CPV Division of the MEA of the Government of India vouching the correctness of issuance of the undertaking on behalf of the Embassy of Kyrgyz Republic dated 06.03.2020, letter no.202/2019 addressed to the District and Sessions Judge, PHC, New Delhi as having been issued by the Embassy of Kyrgyzstan in Delhi qua the Kyrgyz national Aida Askerbekova i.e. in relation to the petitioner no.1.

9. Though, it had been observed vide the impugned order that there was no ground for urgency put forth qua the petitioner no.2, a submission was made on 08.07.2020 during the course of the hearing of the present petition that the spouse of the petitioner no.2 was suffering from COVID-19 and a document in relation thereto was sought to be placed on record and was so placed on the record dated 23.06.2020 to state that Mr. Narman Chalimbayev had been detected to have a RNA component of COVID-19 which document was certified vide a certificate dated 29.06.2020 by the Head of the Consular Section of the Embassy of Kazakhstan stating to the effect that Mr.Narman Chalimbayev, husband of the petitioner no.2, a citizen of Kazakhstan is suffering from COVID-19.

10. The said communication dated 29.06.2020 issued by the Head of the Consular Section, Embassy of Kazakhstan in India was vouched

to be correct by the Head of its Consular Section, Embassy of Kazakhstan in India. The Head of its Consular Section, Ulybek Tulekin, Head of Consular Section, Embassy of Kazakhstan in India was also present during the course of the hearing of the present petition on 22.07.2020 and accepted the correctness of the documents issued by the Embassy of Kazakhstan as placed on record and assured that the petitioners if granted permission to travel abroad, would be brought back to India to face trial.

11. The respondent- Department of Customs through its reply submitted that this petition was not maintainable as being the second revision petition; that the petitioners are foreigners and if granted permission to go abroad on any condition whatsoever, they will never return. The respondent-Department of Customs has further *inter alia* submitted that the petitioners have been arrested for smuggling of gold on a large scale and in adjudication proceedings, the seized gold has been confiscated absolutely and the Adjudicating Authority has also imposed a penalty of Rs.20,00,000/- (Rupees Twenty Lakhs) upon the petitioner no.1 and a penalty of Rs.12,00,000/- (Rupees Twelve Lakhs) upon the petitioner no.2 and the petitioners are yet to deposit the amount of the penalties.

12. The Department of Customs has further submitted that the petitioners are liable to be prosecuted under the provisions of the Customs Act, 1962 and that the prosecution for the same under Section 135 of the Customs Act, 1962 was in the process of being filed and the personal presence of the petitioner would be required

during trial. The respondent has further submitted that any undertaking/assurance of the Embassy is of no consequence as the Embassies are not subject to Indian laws and such undertaking/assurance cannot be enforced and there is no extradition treaty with Kyrgyzstan.

13. *Inter alia* the respondent has submitted that all the documents that have been attached to the petition are after the order of the learned CMM, New Delhi dated 10.12.2019 and are thus, apparently untrue. The respondent- Department of Customs has further placed reliance on the statements of the petitioners under Section 108 of the Customs Act, 1962, whereafter, vide the adjudication order dated 06.07.2020, the Commissioner of Customs, IGI Airport, New Delhi vide ORDER-IN-ORIGINAL-No. 69/Adj./2020 held the two petitioners i.e. the petitioners herein liable for a penal action under Section 112 and Section 114AA of the Customs Act, 1962 and held that there was no redemption offered for the seized gold especially for the reason that the petitioners herein had tried to clear from the Green Channel without declaration and both of them had tried to import gold concealed inside the body around the waist and thigh with the help of strings which established their *mens rea* and that they had intentionally not declared the gold brought by them with an intention to evade the limit of the customs duty leviable on the goods and had attempted to smuggle the goods with intent to evade customs duty.

14. Vide the said order dated 06.07.2020 of the Commissioner of Customs, it was ordered to the effect:-

“ORDER

1. I deny the free allowance if any admissible to NOTICEE-1, Ms. Alda Askerbekova and Noticee-2 Ms. Begalm Akynova for the various acts of commission & omission.

2. I order absolute confiscation of the above said gold total weighing 3150 gms, appraised to Rs. 1,13,74,272/- (Rupees One Crore Thirteen Lakh Seventy four thousand Two hundred Seventy two only) seized from possession of the NOTICEE-1, Ms. Aida Askerbekova, under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962;

3. I also impose a penalty of Rs.20,00,000/- (Rs. Twenty Lakh only) on the NOTICEE-1, Ms. Aide Askrbckovo under Section 112 and 114AA of the Customs Act, 1962.

4. I order absolute confiscation of the above said gold total weighing 1875 gms, appraised to Rs. 67,70,400/- (Rupees Sixty Seven lakh Seventy thousand Four hundred only) seized from possession of the Noticee-2 Ms. Begalm Akynova, under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962;

5. I also Impose a penalty of Rs.12.00.000 /- (Rs. Twelve Lakh only) on the NOTICEE-2, Ms. Begaim Akynova under Section 112 and 114AA of the Customs Act, 1962.”.

The said order is an appealable order in terms of Section 128(1) of the Customs Act, 1962 qua which it had been submitted on behalf of the petitioners that appropriate redressal in accordance with law would be sought by the petitioners in relation thereto.

15. Reliance was sought to be placed on behalf of the respondent- Department of Customs on the proceedings in CRL.M.C.6635/2018

whereby the operation of the impugned order dated 15.12.2018 of the Trial Court permitting the accused therein to travel abroad to Hong Kong was suspended till the next date of hearing. Reliance was also placed on behalf of the respondent-Department of Customs on the order dated 21.12.2018 of this Court in CRL.M.C.6636/2018 likewise where the operation of the impugned order dated 17.11.2018 with apparently similar permission for traveling abroad was stayed.

16. Reliance is also placed on behalf of the respondent-Department of Customs on the order dated 09.04.2019 of this Court in CRL.M.C.6635/2018 read with order dated 05.04.2019 in the said petition to contend to similar effect, whereby, the grant of permission by the Trial Court to the foreign nationals was stayed. All the above CRL.M.Cs i.e. CRL.M.C.6636/2018 & CRL.M.C.6635/2018 on the proceedings of which reliance has been placed on behalf of the respondent are stated to be still pending.

17. On behalf of the petitioners, reliance was placed on the verdict of the Hon'ble Supreme Court in "***Mohit alias Sonu and Anr. vs. State of Uttar Pradesh and Anr.***" (2013) 7 SCC 789, to submit that the powers of this Court under Section 482 of the Cr.P.C., 1973 can be sought to be invoked when there is no remedy provided under the Cr.P.C., 1973 for redressal of the grievance and that despite the previous petition having been filed as a revision against the order dated 10.12.2019 before the learned Trial Court, the petitioners herein were entitled to seek redressal in terms of Section 482 of the Cr.P.C., 1973.

18. Reliance is also placed on behalf of the petitioners on the proceedings in case titled as “*Customs v. Mohammad Sadegh Sartipi*”, File No.VIII (AP)/10/P&I/2795-B/Arrival/2020, PS Customs under Sections 132/135 of Customs Act, to contend to the effect that in the said case, the accused was allowed to travel abroad with the accused made a submission that he shall not seek any extension of his stay abroad including on medical grounds, submitting to the effect that the said order of the duty MM/PHC/New Delhi has not been assailed by the Department of Customs.

19. Reliance is also placed on behalf of the petitioners on the treaty between the Republic of India and the Kyrgyz Republic on mutual legal assistance in criminal matters, which reads to the effect:-

***“TREATY BETWEEN THE REPUBLIC OF INDIA AND
THE REPUBLIC OF KYRGYZ REPUBLIC ON MUTUAL
LEGAL ASSISTANCE IN CRIMINAL MATTERS***

The Republic of India and the Kyrgyz Republic, hereinafter referred to as the "Parties".

Desiring to improve the effectiveness of both Parties in investigation, prosecution and suspension of crime, including terrorism, through co-operation and mutual assistance in criminal matters; have agreed as follows:

PART I - GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO GRANT MUTUAL LEGAL ASSISTANCE

1.1 Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of Mutual assistance in criminal matters.

1.2 Mutual assistance for the purpose of paragraph I shall be any assistance given by the Requested Party in respect of investigation of proceedings in the jurisdiction of the Requesting Party is a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.

1.3 Criminal matters for the purpose of paragraph I mean, for the Kyrgyz Republic, investigations or proceedings relating to any offence enacted by criminal legislation of the Kyrgyz Republic, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.

1.4 Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and International transfer of capital or payments, including those for perpetuating terrorism.

1.5 Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.

1.6 Assistance shall include:

1.6.1 locating and identifying persons and objects;

1.6.2 serving documents, including documents seeking the attendance of persons;

1.6.3 providing information, documents and other records, including criminal records, judicial records and government records;

1.6.4 delivering property;

1.6.5 lending exhibits;

1.6.6 taking evidence and obtaining statements of persons;

1.6.7 executing requests for search and seizure;

1.6.8 making persons in custody and others, including experts, available to evidence or assist investigations;

1.6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;

1.6.10 taking measures to locate, identify, restraint, seize and confiscate funds meant for purposes of terrorisms; and

1.6.11 providing other assistance consistent with the purposes of this Treaty.

.....
.....”

20. On a consideration of the submissions that have been made on behalf of either side, as regards the contention raised on behalf of the respondent- Department of Customs placing reliance on the provisions of Section 397(3) of the Cr.P.C., 1973 which reads to the effect:-

“397. Calling for records to exercise powers of revision. –

.....
.....

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

that the present petition is not maintainable, in as much as, a revision petition had been filed by the petitioners against the order dated 10.12.2019 of the Trial Court, it is essential to observe that the present petition has been filed under Section 482 of the Cr.P.C., 1973 whereunder the inherent power of this Court to make such orders as

may be necessary to give effect to any order under the Code of Criminal Procedure, 1973 or to prevent abuse of the process of any Court *or otherwise to secure the ends of justice has been saved.*

21. Section 482 of the Cr.P.C., 1973 reads to the effect:-

“482. Saving of inherent powers of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

(emphasis supplied)

22. Though, undoubtedly, as laid down by the Hon'ble Supreme Court in *“Monica Kumar (Dr.) and Another Vs. State of Uttar Pradesh and Others” (2008) 8 SCC 781*, the inherent jurisdiction under Section 482 of the Cr.P.C., 1973 has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, nevertheless, the existence of the said inherent power to make such orders as to secure the ends of justice, cannot be held to be inexistent. Taking the said rationale into account, the petition is held to be maintainable.

23. At the outset, it is essential to observe that as regards the prayer made by the petitioner no.2 namely Begaim Akynova as rightly observed vide the impugned order dated 30.05.2020 of the learned ASJ, no urgency whatsoever, had been stipulated on behalf of the petitioner no.2 to travel abroad.

24. During the course of the present petition as observed elsewhere hereinabove, it had been submitted on behalf of the petitioner no.2 that her spouse is suffering from COVID-19, taking into account even though the said document of the medical ailment of the husband of the petitioner no.2 has been verified by the Embassy of Kyrgyzstan, the very nature of the ailment of which the spouse of the petitioner no.2 suffers from, makes it incumbent on the sufferer of the said ailment to be away from other persons whilst in quarantine. Apparently thus, the prayer made by the petitioner no.2, cannot be granted as is declined.

25. The verified documents as verified by the Customs Department and as verified by the Attaché (Consul), Embassy of the Kyrgyz Republic in India, it is apparent that the child of the petitioner No.1 born in the year 2018 is unwell. The record also indicates vide document dated 06.03.2020 as issued by the Embassy of the Kyrgyz Republic in India that vide paragraph 5 of the same that there is no one in the family of the petitioner No.1 to take care of her critically ill son and that her presence is required to ensure her son's good health and surgery.

26. Undoubtedly, as observed by the learned Revisional Court vide the impugned order dated 30.5.2020 in CR No. 881/2019 there is no extradition treaty between India and the Republic of Kyrgyzstan. However, placed on record is the Treaty between the Republic of India and the Kyrgyz Republic on Mutual Legal Assistance in Criminal Trials with Article 1 thereof relating to the obligation to grant mutual legal assistance with paragraph 1.4 dealing specifically with criminal

matters including investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism. As per Clause 1.6 of this Treaty, assistance that is to be provided mutually between India and the Kyrgyz Republic relate to clause 1.6.8 to making persons in custody and others, including experts, available to evidence or to assist investigations through Clause 1.6.10 taking measures to locate, identify, restrain, seize and confiscate funds meant for the purposes of terrorism, thus as it has been undertaken by the Embassy of the Kyrgyz Republic through its Attaché Counsel vide clause 6 of its verified document dated 6.3.2020 to the effect:

“6. In view of the above fact we undertake that under the circumstance M. Aida Askarbekova may get a leave from this Hon’ble Court to travel (to) her home, we shall ensure her presence in India as and when required by the Courts or Custom Department.”,

subject to the petitioner No.1 depositing a sum of Rs.10,00,000/- in the form of an FDR in the Court of the Chief Metropolitan Magistrate, New Delhi, the release of which amount would be subject to the adjudication of any appeal against the order C.No.VIII (AP) 10/P&I/Adj./346/2019/1594-75 dated 6.7.2020, ORDER-IN-ORIGINAL No. 69/ADJ./2020 if any, filed by the petitioner No.1, the petitioner No.1 is allowed to travel to Kyrgyzstan for a period of 45 days to get her child operated with the direction to the petitioner No.1 to return to India on the 46th day of her leaving India with the request to the Embassy of Kyrgyz Republic in India in Delhi, to ensure that the

petitioner no.1 Ms. Aida Askerbekova, holder of Kyrgyzstan Passport No. AC 3167256 returns back to India on the 46th day from the date when she leaves India to Kyrgyzstan for the operation of her son which she is permitted to go only after the deposit of the sum of Rs.10,00,000/- in the form of an FDR as directed hereinabove, which on deposit is directed to be converted into an auto renewal mode. Furthermore, in the event of the petitioner no.1 not returning back on the 46th day of her leaving India to Kyrgyzstan, the said amount of Rs.10,00,000/- deposited in the form of an FDR as directed hereinabove, would stand forfeited.

27. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the appeal of the petitioner no.1, if any, against the order C.No.VIII (AP) 10/P&I/Adj./346/2019/1594-75 dated 06.07.2020, of the Commissioner of Customs.

28. The petition is disposed of accordingly.

ANU MALHOTRA, J.

AUGUST 31, 2020

'neha chopra'/sv