

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

+ Crl.M.A. No. 3297/2010 in Crl.M.C.No.2142/2007

% Date of Reserve: 16.07.2010
Date of decision: 23.07.2010

Mr.S.Pal Gupta and Ors. ...Petitioners/Applicants
Through: Mr.K.K.Sud, Sr.Advocate with
Mr.Vijay Aggarwal, Mr.Gurpreet Singh
and Mr.Nitesh Jain, Advocate

Versus

State ...Respondent
Through: Mr.Aman Lekhi, Sr.Advocate with
Mr.Vishal Balecha, Mr.Gaurav Singh and
Mr.P.S. Singhal, Advocate

With

+ Crl.M.A. No. 3296/2010 in Crl.M.C.No.911/2003

Mr.S.P. Gupta and Ors. ...Petitioners/Applicants
Through: Mr.K.K.Sud, Sr.Advocate with
Mr.Vijay Aggarwal, Mr.Gurpreet Singh
and Mr.Nitesh Jain, Advocate

Versus

State ...Respondent
Through: Mr.Aman Lekhi, Sr.Advocate with
Mr.Vishal Balecha, Mr.Gaurav Singh and
Mr.P.S. Singhal, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.

1. Crl.M.C.No. 2142/2007 and Crl.M.C.911/2003 were disposed of by a common order dated 04.03.2010, which reads as under:-

"1. This is a part heard matter. However, today learned counsel for the petitioners, on instructions, submits that the petitioners do not want this matter to be disposed of on merits and seeks liberty to raise all the points which have been raised before this Court in the Trial Court at an

appropriate stage at the stage of hearing arguments on charge. However, they seek protection from arrest and from personal appearance which order stands granted in their favour for the last more than five years.

2. Learned counsel for the respondents, Mr. Mohit Mathur has no objection to the prayer made on behalf of the petitioner.

3. Taking all these facts into consideration including the factum of pendency of the case for a period of more than five years and taking into consideration that ultimately it is for the trial Court to decide as to whether a charge is to be framed or not in the aforesaid case against the petitioner and to further decide whether the case should proceed or not in view of some of the objections raised on behalf of the petitioner about the propriety of issuance of summoning order etc., it would be appropriate to grant liberty to the petitioners to raise all the issues which have been raised in this petition before this Court at the appropriate stage/stage of framing of charge before the concerned Court.

4. Thus, the said Court is directed to deal with all the issues which have been raised before this Court in this petition at the appropriate stage/at the stage of framing of charge and also to dispose of pending applications before it.

5. The petitioners to appear before the concerned Court/trial Court on 26.03.2010.

6. The petitioners shall also be released on bail on the first date of their appearance which shall be on or before 26th March, 2010 on furnishing bail bonds in the sum of Rs.25,000/- each with one surety each in the like amount to the satisfaction of the concerned court/trial Court subject to the condition that they shall appear as and when required by the Court concerned and would join the investigation if so required by the investigating agency and would not delay the matter. The petitioners shall also be exempted from personal appearance on an application moved by them through duly authorized counsel unless and until they are required by the Court for any purpose. ***The petitioners shall not leave the country without the permission of the court concerned and would not delay the trial of the case.***

7. With these observations the petition is disposed of.

8. All pending applications shall also stand disposed of. However, the interim order passed in various applications would remain in operation till 26.03.2010.

9. The trial Court/investigating agency will proceed from the stage where the case is pending subject to the aforesaid directions.

10. A copy of the order be sent to the concerned Court/trial Court.

11. Dasti.”

2. The applicants, who were petitioners before this Court in the aforesaid petitions, have filed these applications seeking modification/clarification of the aforesaid order dated 04.03.2010 with

respect to the condition imposed for seeking permission of the trial court for going abroad. It has been prayed in the aforesaid applications that;

“(i) Pass necessary orders and directions thereby allowing the present application and modifying or deleting the above-said condition of seeking prior permission from going abroad imposed by this Hon’ble Court vide the order dated 04.03.2010.

(ii) Pass any other order of direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

3. The applications have been opposed by the respondent by stating that the applications are a misuse of the process of Court inasmuch as the petitioners having enjoyed the benefit of the order dated 04.03.2010, cannot now avoid the burden of the conditions prescribed by the said order as conditions for the benefit. It is also submitted that the applicants cannot be allowed to approbate and reprobate or use the bogey of “waste of time” to negate the very salutary requirement of close supervision of law over the movements of the accused. It is further submitted that the judgments cited relate to the concessions granted by the State and are clearly distinguishable and thus, cannot be relied upon by the applicants to support the prayer made in the applications. It is also submitted that taking into consideration the conduct of the one of the accused, the impugned order needs no modification/clarification.

4. During the course of arguments, the applicants have not pressed the application except for Mr.Kaveen Gupta and Mr.Vipul Gupta and have confined their relief to seek clarification of the order with regard to the discretion of the Magistrate while passing an order granting permission to go abroad and further to say that he would not be influenced by anything said by this Court, subject matter of the controversy.

5. Section 438 of the Code of Criminal Procedure empowers this Court to impose conditions while granting anticipatory bail to the applicant, which can include a condition that the applicant would not leave India without the previous permission of the court. A perusal of

the order passed above goes to show that in the present case, the said permission is to be granted by the Court concerned.

6. Insofar as the discretion left with the Magistrate regarding permission to travel abroad is also unfettered except that it is circumscribed by the condition that while granting permission the Magistrate would ensure that there was no delay in the trial of the case.

7. Considering the language of the order impugned in these applications and the other circumstances of the case, I do not think there is any necessity to clarify the impugned order any further. The discretion vested in the Magistrate is sufficient to guide the Magistrate to pass appropriate orders as and when situation arises.

8. The applications are accordingly disposed of.

July 23, 2008
dc

MOOL CHAND GARG, J.