

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

+ **CRL.M.C. 973/2011**

% Reserved on: 10th August, 2011

Decided on: 21st September, 2011

SURESH NANDA

..... Petitioner

Through: Mr. C.A. Sundram, Sr. Adv. and Mr. Sidharth Luthra, Sr. Adv., with Mr. R.N. Karanjawala, Mr. R.K. Handoo, Mr. Sandeep Kapoor, Mr. Shivek Trehan, Mr. Yoginder Handoo, Adv.

versus

CBI

..... Respondent

Through: Mr. P.K. Sharma, Standing Counsel for CBI.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. The grievance of the Petitioner is the denial of permission to go aboard.

A narration of facts before adverting to the issue in question:

- i) The Petitioner, a citizen of India, settled in United Kingdom, having NRI status since 1984, ordinarily resided in the United Kingdom upto 2006,

when Cases RC-AC1-2006-A0004 and RC-1 (A)/2006-ACU (V) were registered under the Prevention of Corruption Act, 1988. The Petitioner was arrayed as an accused and his house and other premises were searched. The passports of the Petitioner and other family members were seized. The Petitioner was allowed permission to travel abroad by the learned Special Judge vide order dated 15th January, 2007 in the abovementioned RC numbers. However, on a revision petition filed before this Court, the order was set aside. On a challenge before the Hon'ble Supreme Court vide order dated 24th January, 2008 the order passed by the High Court was set aside, observing that the right to travel was a fundamental right and the investigating agency had no power to impound the passport. During the course of hearing, it was assured on behalf of the CBI that the investigation in the abovementioned case would be over within six months and the CBI would have no objection if the Petitioner was allowed to travel abroad, after the expiry of six months. The passport of the Petitioner was also sought to be impounded by the competent authority, which order was also challenged and ultimately this Court disposed of the petition vide its order dated 5th October, 2010 directing release of passport of the Petitioner forthwith while taking note of the prayer (c) of the amended writ petition wherein it was stated that the

Petitioner will take the permission of the Trial Court before seeking to travel abroad on the strength of the passport.

ii) In the meantime, on 8th March, 2008 the Petitioner was arrested in case RC-AC1/2008-A0001. In the said case the Petitioner and his co-accused were released on bail by this Court vide order dated 29th April, 2008 with the stipulation that they are not permitted to leave the country, without the prior permission of the Court. The Petitioner applied before the learned Special Judge, CBI on 13th October, 2010 for permission to travel abroad for two months. The reply of the CBI to the application was that the investigation in the instant case was still going on, had reached a crucial stage and was most likely to be concluded in the next two months. The learned Trial Court dismissed the application on 25th October, 2010 on the ground that there was no urgent necessity to travel at that stage, since the CBI had stated that they needed two more months to complete the investigation finally, which was at the crucial stage.

iii) The Petitioner again applied for permission to travel abroad for a period of twenty days. The CBI again filed a reply dated 15th December, 2010 stating that the investigation in the present case was at the conclusion stage and would be put up for final orders before the competent authority by 15th January, 2011. The learned Special Judge vide its order dated 5th March, 2011

again dismissed the application of the Petitioner denying him permission to travel abroad as the CBI was likely to conclude the investigation within two months. CBI was further directed to expedite the investigation in the cases and complete the same within a reasonable period as there was merit in the submission of the Petitioner that he cannot be denied permission to travel abroad indefinitely. The application for clarification filed was disposed of on 15th March, 2011 by recording that the CBI has stated in its reply that the investigation in the instant case is complete and the matter has been put up before the competent authority for final order.

2. The grievance of the Petitioner is that his house is in London, U.K. and he has not been able to visit his home at London for the past more than four and a half years. By the application before the learned Trial Court, it was prayed that the Petitioner be permitted to go to UK and other countries for fifteen days to revive his business. He was ready and willing to abide by any condition imposed by the Court and that he undertakes to appear within 72 hours before the CBI on their asking him to do so.

3. On a notice being issued in the present petition, a reply has been filed by the CBI that the Petitioner should not be permitted to travel abroad as the investigation was at a very crucial stage and shall be completed in a very brief period of time. The CBI has already finalized the report and the same is being

considered by the competent authority for filing it before the Court. It is also urged that the Petitioner should not be permitted to travel abroad as there is a likelihood that he will not return to face the trial. By a status report it is further contended that the Petitioner is also an accused in case RC AC1-2006-A0004, the Barak Missile case in which the investigation is pending and the Letters Rogatories have been issued to various countries including U.K. and Israel for investigation. In case the Petitioner is permitted to travel abroad there is every apprehension that he would interfere with the execution of the letters Rogatories. The CBI had come across instances where the petitioner's co-accused had been found to be interfering with the execution of the letters rogatories in various countries. Thus the principal grievance of the CBI is that since the Petitioner is likely to interfere in the investigation relating to Barak Missile case in the letters rogatories issued, he should not be granted permission to go abroad as his co-accused was found to be interfering in the said investigation.

4. I have heard learned counsel for the parties at length.

5. There is no allegation that the Petitioner failed to join the investigation when directed. The only case in which the Petitioner remained in custody is the present case i.e. RC-AC1/2008-A0001 wherein this court while granting bail on 29th April, 2008 observed:

- “15. The statements of some witnesses have already been recorded by the CBI. On instructions, Mr. Malhotra informs the Court that by the time the charge sheet is filed, i.e., in the next ten days, the CBI expects to examine between eight to ten witnesses at the most. Therefore, the apprehension about the Petitioners influencing the witnesses really does not arise. The CBI can ensure that these witnesses who are to be examined are given due protection in order to obviate to any such attempt by any of the Petitioners.
18. Keeping in view the facts and circumstances of the case, this Court is of the considered view that the Petitioners have made out a case for grant of bail at this stage. Each of the Petitioners shall be released on bail on their furnishing personal bonds in the sum of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of the Special Judge, CBI, Patiala House, New Delhi. The Petitioners are not permitted to leave the country without the prior permission of the trial court. As far as, each of the Petitioners will appear before the trial court as and when the matter is fixed there and in addition appear before it on the first working Monday of every calendar month. At each appearance, they will furnish their correct present address to the trial court. The passport of Mr. Bipin Shah seized by the CBI will be deposited in the trial court. The impounded passport of Mr. Suresh Nanda will also be deposited with the trial court. As regards the passport of other Petitioners i.e. Mr. Sanjeev Nanda and Mr. Asuthosh Verma, they will also surrender their passports in the trial court forthwith. The Petitioners will not influence any of the witnesses and not seek unnecessary adjournments before the trial court. They will not impede the fair progress of the trial in any manner whatsoever.”

It is, thus, evident that while granting bail and imposing the condition of seeking permission for going abroad, the pendency of the investigation in the

Barak Missile cases was not a criterion though this issue was raised by the learned Additional Solicitor General on behalf of the CBI.

6. Despite the statements on 29th April, 2008, that charge-sheet was to be filed in next ten days and on 5th March, 2011, that the investigation is likely to be concluded within two months, the charge-sheet has not been filed till date. The learned Special Judge vide its order dated 5th March, 2011 itself had directed the CBI to expedite its investigation in the case and complete the same within a reasonable period as there was merit in the submission of the Petitioner that he cannot be denied permission to travel abroad indefinitely. Despite more than six months having elapsed after the directions issued by the learned Special Judge to expedite the same and conclude within a reasonable period, there is no definite time frame given when the CBI was likely to file the charge sheet.

7. The real objection is that there is a likelihood of interference in the ongoing investigation in the other cases, that is, the Barak Missile case where the Petitioner is allegedly an accused, as some interference was noted from the co-accused Vipin Khanna. There is no denial to the fact that as far as Vipin Khanna is concerned there is no restriction on his movement, neither his passport has been impounded nor he is required to seek permission of the court before leaving the country. Till date in the Barak Missile case the

petitioner has neither been arrested nor has any condition been imposed requiring him to take permission to go abroad. An ongoing investigation in another case cannot be an embargo and treated as a condition for denying the liberty to travel abroad in the present case. It may further be noted that while granting bail to the Petitioner the reason why the condition of seeking permission to travel abroad was imposed was the pendency of investigation in the present case and not the Barak Missile case. The contention that there is interference in the execution of Letter Rogatories at Mauritius as two applications have been filed by M/S. Y2K Systems International Ltd and M/S. Universal Business Solution before the Supreme Court of Mauritius is misconceived. Even if M/s. Universal Business Solutions has invested in the Claridges Hotel of the Petitioner and is thus connected with the Petitioner, taking a legal remedy cannot be said to be interference in investigation.

8. The other objection of the CBI that the Petitioner is likely not to return back if permitted to go abroad also appears to be unfounded. The Petitioner has roots in India. The passport of the son of the Petitioner who is a co-accused is already with the Trial Court.

9. The travel of the Petitioner cannot be withheld indefinitely. The same would be violative of his fundamental right. Hon'ble Supreme Court in *Mrs. Maneka Gandhi v. Union of India and another*, (1978) 1 SCC 248 held:-

“193. It seems to me that there can be little doubt that the right to travel and to go outside the country, which orders regulating issue, suspension or impounding, and cancellation of passports directly affect, must be included in rights to “personal liberty” on the strength of decisions of this Court giving a very wide ambit to the right to personal liberty (see : *Satwant Singh Sawhney v. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi, AIR 1967 SC 1836; *Kharak Singh v. State of V.P.*, AIR 1963 SC 1295).”

10. The Hon’ble Supreme Court in *Chandraswami vs. CBI*, AIR 1998 SC 2697 converted an absolute condition imposed on the Petitioner therein for not leaving the country to one wherein the Petitioner therein was directed not to leave the country unless permitted by the Court, on such conditions as the court may impose. This Court in *Enforcement Directorate vs. Nemi Chand Jain*, 2008 (101) DRJ 2055 held that liberty of an individual cannot be curtailed on the ground that investigation was pending for several years.

11. A Division Bench of Punjab & Haryana High Court in *Rajinder Kaur and another v. Union of India and others*, AIR 2004 P&H 347 held as under:-

“8. In the case of *Satwant Singh Sawhney v. D. Ramarathnam*, Assistant Passport Officer, New Delhi, AIR 1967 SC 1836 the Supreme Court expanded the scope of freedom to travel and equated the same to a fundamental right and a constitutional protection available to the citizens of this country. This expansion of right of freedom has been reiterated with approval in various subsequent judgments. The Supreme Court also emphasised that every executive action which is or which may or is likely to operate prejudicial to the interests of any person must be supported by legislative authority. In the case of *Smt. Maneka Gandhi v. Union of India*, AIR

1978 SC 597 the Court held that a person cannot be deprived of his right to go abroad.”

12. Despite having stated on the 5th March, 2011 that the investigation is likely to be concluded within two months, till date charge sheet has not been filed. Even during the hearing of the present petition it has not been informed as to when the charge sheet will be filed. As far as interference in the Letter Rogastories in the Barak Missiles case is concerned, in the absence of any condition being put in the said case directing the Petitioner will not leave the country without prior permission, in my opinion this cannot be a reason in the present case to decline permission to go abroad.

13. In the facts and circumstances of the case, the learned Trial Court is thus directed to permit the Petitioner to go to London for a period of two weeks on his furnishing a fresh itinerary, giving the address where he would be staying in London, subject to the further condition that Petitioner will submit a security in the form of documents of a self owned property worth Rs.50 crores.

14. Petition stands disposed of.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 21, 2011
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