

GAHC010062732023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/228/2023

DIBYAJYOTI DUTTA,
S/O SRI PRAFULLA CHANDRA DUTTA,
R/O NILGIRI LANE,
BAGHARBARI
SATGAON ROAD, PANJABARI GUWAHATI, ASSAM, PIN-781037

VERSUS

CENTRAL BUREAU OF INVESTIGATION,
REP. BY ITS SPECIAL PUBLIC PROSECUTOR.

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, C B I

Linked Case : Crl.Pet./1082/2022

DIBYAJYOTI DUTTA
S/O SRI PRAFULLA CHANDRA DUTTA
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VERSUS

CENTRAL BUREAU OF INVESTIGATION
REP. BY ITS SPECIAL PUBLIC PROSECUTOR.

Advocate for : MR S BORTHAKUR
Advocate for : SC
CBI appearing for CENTRAL BUREAU OF INVESTIGATION

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

Date : 09-06-2023

Heard Mr. S. Borthakur, learned counsel for the applicant/petitioner. Also heard Mr. M. Haloi, learned Standing Counsel representing the Central Bureau of Investigation.

2. By way of this interlocutory application, the applicant/petitioner seeks modification of Final Order dated 20.12.2022 passed by this Court in Criminal Petition No.1082/2022.

3. It is submitted by the learned counsel for the applicant/petitioner that vide order dated 20.12.2022 passed Criminal Petition No.1082/2022, the petitioner was allowed to travel to United States of America (in short USA) for a period of 07.01.2023 to 05.02.2023. However, the petitioner could not get any appointment for interview as per planned date and therefore on 05.01.2023 he wrote an email to the CBI informing them about his inability to get the interview for VISA and thereby he is postponing his plan of visiting the USA.

04. It is submitted that the petitioner finally got an appointment for interview for VISA with the US Department of State on 17.01.2023 at the USA Consular Office in Kolkata and another at the USA Consular Office in Mumbai on 21.01.2023. Accordingly, the petitioner attended the interviews and VISA was issued on 23.01.2023, whose expiry date is 19.01.2033. As the petitioner was granted VISA only on 23.01.2023, he could not travel to USA on his planned date i.e. from 07.01.2023 to 05.02.2023. Therefore, the petitioner rescheduled his plan of visiting the USA from 30.09.2023 to 03.11.2023 only on the ground to meet his son, who is studying in USA. Thus, with the above stated ground, the present petition has been filed to modify the Final Order dated 20.12.2022, to the extent that the petitioner be allowed to travel to USA from the period of 30.09.2023 to 03.11.2023 instead of earlier scheduled date i.e. 07.01.2023 to 05.02.2023.

05. The applicant has annexed all the required documents along with the petition.

06. It is also stated by the learned counsel for the applicant/petitioner that the permission to travel to USA is only for, to visit his son, who has been pursuing his study in Neurology Programme at the University of Minnesota Medical School.

07. In this context, the learned Standing counsel on behalf of the CBI has filed a written objections against the present application for modification of order dated 20.12.2022 and stated that the CBI, ACB, Guwahati Branch had registered

a case Vide Case No.RC-0172019A-0001 against the present applicant/petitioner, under Section 120B IPC *read with* Section 7, 7(A), 8 & 12 of the Prevention of Corruption Act, 2008 and the detail of the case is given in the written objection, which has been filed by the CBI. The present accused/applicant has been booked and charge-sheet was filed against the present petitioner in the said CBI investigated case.

08. It is further, stated that the case has already been charge-sheeted against the present petitioner along with two other accused persons and presently the matter is pending before the Court for appearance as well as for framing of the charges. The period of offer given by the University of USA for study programme of his son had already been lapsed, and no fresh ground has been cited by the accused/applicant/petitioner. And accordingly, this interlocutory application has been filed for modification is liable to be rejected. Though, the applicant/petitioner was allowed to visit to USA for a period of 07.01.2023 to 05.02.2023, to attend study programme offered to his son, but, the accused/applicant obtained B-1/B-2 VISA for a period of 10(ten) years i.e. from 23.01.2023 to 19.01.2033.

09. Further, it is submitted that if the accused/applicant is permitted to visit abroad, there is every chance of delay being caused in the proceedings of the case and he may also evade the proceedings by way of extending the stay in abroad on one or other pretext or may flee from abroad to another Country with which our Country has no Extradition Treaty and thereby flee away from justice. Accordingly, submitted that the present IA has no merit and is liable to be rejected.

10. In reply to his submission, the learned counsel for the applicant/petitioner submitted that the applicant will not be allowed to stay for more than maximum of 180 days in the USA as per terms and conditions of VISA. The only ground of filing of the present petition is to meet his son, who is studying in USA. Further, he also submitted that during the entire period of investigation as well as even after filing of the charge-sheet the present applicant/petitioner cooperated with the investigation. He also appeared before the Trial Court after receiving the summon, and was accordingly allowed to remain on previous bail by the Special Judge. His wife is a doctor and his entire family resides in Assam, so there is no chance of fleeing away to another Country as stated by the learned counsel and further, there is no chance of evading from the trial.

11. After hearing the submissions made the learned Advocates of both sides as well as after perusing the case records, it is seen that the ground mentioned by the present petitioner in the Criminal Petition No.1082/2022 dated 20.12.2022 was allowed, and he was accordingly granted limited time to travel to USA from 07.01.2023 to 05.02.2023. It is also seen that after receiving of summon, the accused applicant appeared before the learned Trial Court and also intimated the concerned department through email mentioning his ground of postponing the visit to USA.

12. So considering the reasonable ground mentioned in the petition and also considering the reasons for postponing the visit to USA and all other circumstance of this case, I find it justified to permit the petitioner to travel to the USA for a period of 30.09.2023 to 03.11.2023.

13. In that view of the matter, the Final Order dated 20.12.2022 passed in Criminal Petition No.1082/2022 shall stand modified by substituting the date mentioned in para 16 therein as under:

“16. Accordingly, the petitioner shall give the details of his itinerary, his address, phone number and contact details to the concerned Court as well as the Investigating Officer and will immediately report to the Investigating Officer on his return from United States of America. Further, the petitioner shall execute a personal bond of Rs.40,000/-(Rupees Forty thousand) only before the learned Special Judge, CBI, Assam, Guwahati. Further, the bail conditions imposed vide order dated 11.04.2022 is relaxed and the learned Special Judge, CBI, Assam, Guwahati, is hereby asked to handover the passport to the applicant. On his return from United States of America, the petitioner shall deposit his passport before the learned Special Judge, CBI, Assam, Guwahati. Further, the petitioner is allowed to visit abroad/ United States of America only for a period from 30.09.2023 to 03.11.2023, and immediately on 03.11.2023 he will report before the Special Judge, CBI”.

14. In terms of above observation, this interlocutory application stands allowed and, disposed of.

JUDGE

Comparing Assistant