

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1173 of 2015

1. Dr. Rajendra Banthia S/o Late Panmal Ji Banthia Aged About 57 Years R/o Banthia Nursing Home, Raja Talab, Raipur Chhattisgarh Tahsil & District Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The District Magistrate, Raipur Chhattisgarh.
2. Union of India, through the Secretary, Ministry of External Affairs, New Delhi.
3. The Passport Officer, Passport Office, Commercial Complex, 1st Floor, Pt. D.D.U. Nagar, Sector-4, Raipur (CG).

---- Respondent

For Petitioner	Shri B.P. Sharma, Advocate
For Respondent/State	Shri R.K. Gupta, Dy. Adv. General

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/12/2015

1. Petitioner is an accused in criminal case No.764/2013 for offence punishable under Sections 420, 467, 468, 471 & 120-B of the Indian Penal Code wherein the petitioner has allegedly obtained fraudulent payment from the Government/Insurance Company by using the SMART card of

the patients without, in fact, providing any treatment to them.

2. During pendency of the trial, the petitioner moved an application before the trial Court for allowing him to visit his daughter who resides at Truro, Cornwall, London (United Kingdom). The application was dismissed by the trial Magistrate on 16-5-2013 on the ground that while allowing bail to the petitioner, the Sessions Court has not restricted/prohibited his travel to any foreign country.
3. The petitioner, thereafter, moved an application before Passport authorities on 3-9-2013, which was rejected on 30-9-2013 on the ground that when a citizen is facing the trial for any criminal offence, the authorities are duty bound to refuse to issue passport under the provisions of the Passport Act, 1967 (for short 'the Act, 1967'). The petitioner, thereafter, moved an application before the Magistrate, which was rejected on 17-12-2013, against which a revision application was preferred before the 7th Additional Sessions Judge, Rapur, in criminal revision No.14/14, which was dismissed on 17-4-2014.
4. Subsequently, the petitioner preferred writ petition before this Court bearing WPC No.1000 of 2014, which was dismissed as

withdrawn on 11-5-2015 in view of the fact that the petitioner had not moved any application before the trial Magistrate quoting the provisions under Section 6 (2) (f) of the Act, 1967. The petitioner, thereafter, moved another application seeking permission, which was dismissed on 29-5-2015 against which Cr.R. No.220/15 was preferred before the Sessions Judge, Raipur, which came to be dismissed on 25-6-2015.

5. Referring to the law laid down by the Supreme Court in **Maneka Gandhi v. Union of India and Another**¹, learned counsel for the petitioner would submit that merely because a criminal trial is pending petitioner's right to free movement to visit his daughter cannot be curtailed.
6. Per contra, learned counsel for the State would submit that the petitioner is facing serious charges of committing fraud with the exchequer, therefore, denial of permission to visit a foreign country is fully justified.
7. Perusal of the orders passed by the trial Magistrate and by the Sessions Court at different point of time, as mentioned above, would indicate that at the first occasion the trial Magistrate refused to grant any express order or permission on the ground that no such restriction/prohibition has been imposed while releasing the petitioner on bail. When second

¹ (1978) 1 SCC 248

application was moved it was rejected on the ground that similar application has earlier been rejected. When the petitioner withdrew his writ petition with liberty to move fresh application, his prayer was rejected by the trial Magistrate on the ground that the offences against the petitioner are serious in nature.

8. It is to be seen that the State Government has not raised any apprehension that the petitioner is likely to abscond and not take on the trial. It is also to be seen that the petitioner is not a hardened criminal in that sense of the matter because barring this particular criminal case, no other pending criminal case against the petitioner has been brought to the notice of the trial Magistrate or to this Court. It is not a case where the petitioner is facing any allegation like violation of the provisions of the Money Laundering Act or Foreign Exchange Management Act (FEMA) or any other offence concerning the security, sovereignty or integrity of the country.
9. Shri Sharma would state that the petitioner is a Cardiologist and is running the Nursing Home at Raipur, therefore, it is impossible that he would leave his Nursing Home and flee away to some other country.

10. Having regard to the facts situation of the case, it appears the petitioner deserves permission to visit his daughter who resides at Truro, Carnwall, London (United Kingdom) within an outer limit of four months from today.
11. It is made clear that this permission shall cease to have any effect after expiry of four months from today. The petitioner shall also furnish additional security of Rs.10.00 lacs before the trial Magistrate. After his return from Truro, Carnwall, London (United Kingdom), the petitioner shall co-operate with the trial Court in early conclusion of the trial.
12. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri