

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-20612 of 2015(O&M)
Date of Decision: April 25, 2016

Lt. Col. Baljit Singh Sandhu

...Petitioner

VERSUS

CBI Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bipan Ghai, Senior Advocate with
 Mr.Mandeep Kaushik, Advocate
 for the petitioner.

Mr.Sumeet Goel, Advocate
 for CBI Chandigarh.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against CBI Chandigarh for quashing of the impugned order dated 06.06.2015 passed by learned Special Judge, CBI, Punjab in CRM No.24 of 2015 whereby application for permanent release of passport for the purpose of conducting Business Conference and Seminars of his company M/s WWICS Ltd. and further to modify the order dated 03.01.2009 passed by learned Special Judge, CBI, Patiala, whereby the petitioner was directed to deposit his passport.

Notice of motion was issued and learned counsel for CBI appeared and contested the petition.

I have heard learned counsel for the petitioner as well as

learned counsel for CBI and have gone through the record.

From the record, I find that learned Special Judge, CBI, Punjab, Patiala, vide order dated 06.06.2015, dismissed the application to release the passport of the petitioner. It is stated in the application that applicant is the Chairman-cum-Managing Director of M/s WWICS Ltd. having offices in India and abroad and has been visiting abroad frequently to conduct his business activities. The applicant has already been granted permission by this Court to go abroad many times and he has never misused the concession granted to him. The applicant has already furnished surety of the land measuring 52 kanals worth ₹7crores. The proceedings of this case have already been stayed by the Hon'ble Supreme Court. The passport of Harsh Kumar co-accused of the applicant, has already been released permanently by this court vide order dated 28.05.2009.

Learned Special Judge held that vide order dated 03.01.2009, at the time of granting bail to the applicant, that the fundamental right of the applicant to go abroad on various occasions has never been curtailed by this Court and this Court has been releasing his passport as and when prayed for subject to certain conditions. The applicant is at liberty to move the Court for seeking permission to go abroad and consequential release of his passport but he cannot claim parity with his co-accused Harsh Kumar on the basis of the order dated 28.05.2009. It is also held by learned Special Judge that he is not empowered to review its own order dated 03.01.2009.

At the time of arguments, it is admitted that passport cannot be impounded by the Courts or anybody else as per the provisions of Passport Act.

Learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in **Suresh Nanda vs. CBI in Criminal Appeal No.179 of 2008 decided on 24.01.2008**, wherein it is held as under:-

"15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr. P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passport Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg.133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing."

Keeping in view the law cited above, the present petition is allowed. The impugned order dated 06.06.2015 passed by learned Special Judge, CBI, Punjab, Patiala is set aside. Learned trial Court is directed to release the passport to the petitioner subject to furnishing of surety bonds in the amount of ₹5 lacs and undertaking of the petitioner that he will not visit abroad except with the prior permission of the Court.

April 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE