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

Judgment dated: 9th February, 2017

+ CRL.M.C. 4861/2016 & CRL.M.A.20173/2016, 20175/2016, 147/2017
DIRECTORATE OF REVENUE INTELLIGENCE Petitioner
Through: Mr.Amish Aggarwala, Adv. with
Mr.Satish Aggarwala, Adv.

versus

DR.BERND AUGUSTINE Respondent
Through: Mr.Kirti Uppal, Sr. Adv. with Mr.Santosh
Chaurihaa, Mr.Meraj A Khan,
Mr.Ashutosh Dubey and Mr.Harsh
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

I.S.MEHTA, J (ORAL)

1. This is a petition under Section 482 Cr.P.C challenging the impugned orders dated 20th December, 2016 and 21st December, 2016 passed by learned CMM, New Delhi in case title “DRI versus Dr.Bernd Augustine”.
2. It is submitted by learned counsel for the petitioner that the impugned order dated 20th December, 2016 granting permission to the respondent to travel Germany and impugned order dated 21st December, 2016 releasing passport to the respondent is bad in law. He has further submitted that there is apprehension that the respondent will not return India to face trial. He has further submitted that to meet the ends of justice, the impugned orders be set aside.
3. Learned counsel for the respondent has vehemently opposed the contention of learned counsel for the petitioner and submitted that the

present petition confines to the subject of allowing the respondent going abroad. He has further submitted that on 09.12.2016 the respondent moved an application seeking permission to travel to his native country i.e. Germany and the respondent was granted permission to go abroad vide order dated 20.12.2016 subject to deposit of Rs.15 lacs by way of demand draft/bankers cheque/FDR. He has further submitted that on 21.12.2016, the respondent furnished demand draft for a sum of Rs.15,00,000/- and the learned CMM, New Delhi directed the petitioner department to release passport of the respondent on that day itself.

4. Impugned order dated 20th December, 2016 passed by learned CMM, New Delhi is reproduced as under:

“DRI Vs. Dr. Bernd Augustin

20.12.2016

Present: Ld. SPP for DRI.

Ld. Counsel for accused Dr. Bernd Augustin

Accused is present.

DRI has filed reply to the application whereby the accused Dr. Bernd Augustin had sought permission to travel to Germany coupled with the response to the certificate furnished yesterday.

Heard.

Ld. Counsel for DRI submits that antique articles were recovered from the possession of accused. Investigation is underway. She further submits that articles recovered from him – 8 articles were found to be antique. She therefore, strongly opposes this application moved by applicant / accused to travel back to Germany.

Percontra, Ld. Counsel for accused submits that accused has a deep root in the society and he can also produce the bills of the recovered articles. He had stated everything to DRI – there is no requirement for his remaining in India for the purposes of investigation. It is further submitted that accused is an Indophile having deep knowledge about the history and culture of this country. He has come to this country many a times. The articles recovered were purchased from the market in ordinary course. It is further submitted that the accused shall abide with the directions imposed by this court.

On behalf of accused reliance is also placed on the Consular Certificate issued by Mr. Frank Thierfelder, German Counsellor and Consul and filed on 19.12.2016.

Considered.

The Consular Certificate reads as under:

“Dr. Bernd Augustin, S/o. Oskar Hermann, R/o. Schone Aussicht 9, 22085 Hamburg / Germany, is a German Citizen and is residing at the above said address with his family.

That the Embassy has come to know that Dr. Bernd Augustin has been involved in DRI/HQ-G1/338/XIV/ENQ-II/INT-NIL/2016.

The Embassy hereby affirms that Dr. Bernd Augustin can be allowed to travel to his native place for the time period which this Honorable Court may

kindly be please to allow.

That any summons / notice if issued for his appearance will be executed and complied with the directions by the competent authority and will be complied with by directions by the competent authority and will be complied with by the full co-operation from the affirming authority by all course of action to secure the appearance by Dr. Bernd Augustin.

That Dr. Bernd Augustin has assured that he will comply any direction passed by this Honourable Court as well as by the Embassy of the Federal Republic of Germany if allowed to travel to his native Country. Dr. Bernd Augustin also assured that he will be present whenever the Honourable Court/competent authority orders him to do so.

He also assured that he may be issued any notice through email ID karinaugustin@gms.de and he will duly comply with the same.”

The reading of the said undertaking/ certificate lends credence to the version of the accused. I do not have any reason to disbelieve the said certificate. To my mind when Sovereign Countries certify to undertake there has to be strong circumstances to refuse such request/ undertaking.

Dehors the aforesaid let me now revert back to the bail order.

Bail order was passed in this case by the

department itself treating the offence to be a bailable one. Now if that is so, once bail order is passed u/s 436 Cr.P.C. in that situation there cannot be any condition imposed – restricting the liberty to move out of the country inasmuch as it is not an order passed u/s 437 Cr.P.C. That also needs to be borne in mind.

Taking into account the submissions made by the parties, permission to travel abroad is granted to the accused Dr. Bernd Augustin subject to deposit of Rs. 15 lacs which shall be deposited in Court by way of an FDR.

Ld. Counsel for the accused submits that it would be difficult to make an FDR and as such permission be granted to deposit the same by way of demand draft.

Heard.

Accused/ applicant is directed to deposit the said amount by way of DD/ Bankers Cheque/ FDR in the name of the Court.

Accused is granted permission to travel to Germany for two months and he would return back to India on or before 28.02.2017. In the eventuality of default this amount shall be forfeited.

File shall now be taken up upon compliance.

(Sumit Dass)

CMM/PHC/New Delhi

20.12.2016”

5. What is emerging on record is that the respondent sought permission to go abroad. Mr. Frank Thierfelder, German Counsellor and Consul filed a certificate on 19.12.2016 affirming the plea of the respondent that he is a citizen of Germany and his presence can be secured. The respondent was granted permission to go abroad vide order dated 20.12.2016 subject to deposit of Rs.15,00,000/- by way of demand draft/bankers cheque/FDR. In compliance of order dated 20.12.2016, the respondent furnished demand draft for a sum of Rs.15,00,000/- which was accepted by the learned CMM, New Delhi on 21.12.2016. To my mind, Mr. Frank Thierfelder, German Counsellor and Consul is the appropriate guarantor in the present facts of the case, who can assure the presence of respondent. Therefore, I find no infirmity in the impugned orders passed by the Court below.
6. Resultantly, the present petition is dismissed and disposed of accordingly. All pending application(s) (if any) also stand disposed of.
7. Trial Court Record be sent back.
Copy of this order be given *dasti*.

**I.S. MEHTA
(JUDGE)**

FEBRUARY 9, 2017/radhika