

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.02.2018

Pronounced on :20.02.2018

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.R.C.Nos.104 and 105 of 2018

Shri.M.Prem Kumar

.. Petitioner in
both cases

/versus/

State Rep.by
Superintendent of Police,
CBI,ACB, Shastri Bhavan,
Chennai 600 006.

... Respondent in both cases

Prayer in Crl.R.C.No.104 of 2018: Criminal Original
Petition is filed under Sections 397 and 401 of Cr.P.C. praying
to set aside the order in Crl.M.P.No.3960 of 2017 on the file of
XI Additional CBI Court, Chennai and direct return of the
petitioner's passport in No.Z1764282 in the custody of the said
Court subject to such terms and conditions as this Court may
impose.

Prayer in Crl.R.C.No.105 of 2018: Criminal Original
Petition is filed under 397 and 401 of Cr.P.C. praying to set
aside the order in Crl.M.P.No.3961 of 2017 on the file XI
Additional CBI Court, Chennai and direct return of the
petitioner's passport in No.Z1764282 in the custody of the said
Court subject to such terms and conditions as this Court may
impose.

For Petitioner :Mr.B.Satish Sundar
in both cases

For Respondent :Mr.K.Srinivasan, Apl.PP(CBI)
in both cases

COMMON ORDER

The petitioner herein is arrayed as 2nd accused in Crime
No.RCMA No.1/2016 A 0051 on the file of the respondent and

pending before XI Additional City Civil and Sessions Judge and Special Court for CBI Cases relating to Banks and Financial Institutions.

2. This petitioner was initially shown as accused in Cr.No. RCMA No.1/2016 A 0040 registered by the respondent on 02.01.2017 for the alleged offences under Sections 120-B r/w 409 and 420 IPC and under Section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988. He was arrested by the respondent and later, enlarged on bail on 17.03.2017 on condition that he should appear before the respondent daily at 10.30 a.m., and surrender his passport to the custody of the Court, where the case is pending for trial.

3. While so, on 20.03.2017 in connection with the case booked by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002, he was arrested and remanded to judicial custody in connection with Crime No.RCMA No.1/2016 A 0051. Later, he was released on 12.05.2017 on condition that he should stay at Delhi and report before the Enforcement Directorate daily. The said condition was relaxed/modified subsequently in Crl.M.P.No.1859 of 2017 by the trial Court that he should report before the respondent once in 15 days. The said condition was further relaxed in Crl.M.P.No.3346 of 2017 that he should report before the respondent on first Monday of every month. Accordingly, he complied with the condition without any default.

4. When he sought for relaxation of the condition in toto, the trial Court has rejected his request. He has also sought for return of his passport, which he surrendered before the trial Court is one of the conditions imposed while granting bail. The reason for return of passport is for him travel abroad to make arrangements for higher studies of his daughter by name Ms.Latika, who is currently pursuing her XII Standard in Bhartiya Vidya Bhavan, Kilpauk, Chennai to get medical seat abroad. The trial Court has not considered his petition favourably. Hence, the above said revision petitions have been filed to set aside the orders of the trial Court passed in Crl.M.P.Nos.3960 of 2017 and 3961 of 2017.

5. The learned counsel appearing for the petitioner would submit that travelling abroad is a fundamental right, which is protected under the Constitution. By withholding his passport the fundamental right of the petitioner is curtailed. The petitioner being a reputed gentleman in the society having root in Chennai will not flee away from justice or make himself scare or unavailable before the Hon'ble Court for the purpose of investigation. Therefore the order of the trial Court declining

to return the passport has to be reviewed.

6. In support of his submission, the learned counsel appearing for the petitioner would also rely upon the judgment of the Hon'ble Supreme Court rendered in Suresh Nanda v. Central Bureau of Investigation reported in (2008) 3 SCC 674.

7. Per contra, the learned Special Public Prosecutor appearing for the CBI Cases would submit that the petition for return of passport is filed without furnishing any details about the proposed travel abroad by the petitioner/accused. The trial Court has rightly dismissed the petition on the ground that the petition is bereft of details besides the passport is also not seized by the police during the investigation, but it has been surrendered by the accused pursuant to the order passed by the Court while granting bail. Therefore, returning the passport surrendered pursuant to the bail condition does not arise.

8. Further, the learned Special Public Prosecutor appearing for CBI Cases would also submit that the judgment of the Hon'ble Supreme Court cited supra by the learned Senior Counsel appearing for the petitioner is factually not applicable to the case in hand, since the said judgment is in respect of seizing and impounding of passport by the investigating agency. Whereas, in this case, there is neither seizure nor impounding but only surrender of the passport by the accused person pursuant to the direction of the Court while granting bail. As far as the petitioner is concerned, the background of the case alleged against the petitioner warrants interference in the order of the trial Court.

9. The Government of India took serious measure to weed out the unaccounted money and fake currencies by demonetization of five hundred and thousand rupee currencies. In the place of five hundred and thousand rupee notes initially when new two thousand rupee currencies were put in to circulation immediately after demonetization, the distribution of new two thousand rupees currencies was restricted to Rs.4000/- to each person. While so, apart from 30kg of gold and Rs.3 crores of old invalid currencies, Rs.33 crores of new two thousand rupees currencies was seized during the search and seizure of the premises of the Sekar Reddy, K.Rathinam, S.Ramachandran, Srinivasalu and the petitioner Premkumar.

10. Initially, the case under Indian Penal Code and Prevention of Corruption Act has been registered and later, another case for the offence under Prevention of Money Laundering Act has also been registered and under investigation. If the petitioner is allowed to go abroad, there is every

possibility of absconding thereby causing delay in completion of the investigation

11. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent.

12. At the outset, it is to be made it clear that travel abroad is not an absolute right without any fetters. Like any another fundamental right, travelling abroad is also subject to reasonable restrictions. Therefore, a person accused of grave crime cannot seek return of passport as a matter of right claiming that holding the passport is infringement upon his fundamental right. As far as this case is concerned, the petitioner is arrayed as prime accused in two cases. Both the cases are related to possession of huge currencies of high denomination. Both invalid as well as valid tender introduced recently. The investigation agency is probing into the offence on multi dimensional angle including money laundering.

13. The contention of the petitioner is bereft of details. He even in the revision petition had not come out with specific details about the date of his proposed travel abroad or the places he is likely to visit and what preparatory measures he has taken before visiting these countries for securing medical seat for his daughter.

14. When the matter came up for admission, this was pointed out by the learned counsel appearing for the petitioner. He has filed an affidavit wherein he has stated that he has identified certain Universities in Singapore, Malaysia and Russia and he is likely to visit those places personally to identify the colleges and facilities which would be suitable for his daughter's future study in medicine. Therefore, he requires his passport to travel abroad between March 2018 and June 2018. He has given a mobile phone number to contact him during his visit abroad.

15. As pointed out by the learned Special Public Prosecutor for CBI cases, the details furnished in the additional affidavit also does not carry any worthy information to believe that the petitioner wants the return of passport to go abroad for identifying colleges for his daughter. He has named three different countries without mentioning the name of the University or College which offers medical education.

16. The learned counsel appearing for the petitioner strongly rely upon the judgment of the Hon'ble Supreme Court rendered in Suresh Nanda v. Central Bureau of Investigation cited supra. This is a case where the passport of a Non-Resident Indian(NRI) was seized by the CBI during the search conducted by them. When the petition sought for return of the

passport, the trial Court allowed the petition but the High Court reversed the same. When the matter was taken up to the Hon'ble Supreme Court, the Hon'ble Supreme Court held that passport can be impounded only by resorting to Section 10(3)(e) of Passport Act, 1967 which specifically deals with impounding of passport. Investigation agency can seize any document under Section 102(4) Cr.P.C. However, passport cannot be seized since the special Act namely, Indian Passport Act, provides for impounding the passport. While holding so, the trial Court has pointed out the difference between seizing and impounding.

17. In Para 16 of Judgment cited supra, the Hon'ble Supreme Court has observed as under:

"16. Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passport Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not. Since impounding of a person has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide State of Orissa v. Binapani del)

18. Coming to the facts of the case in hand, it is neither seizure or impounding of passport. The petitioner has surrendered his passport to the Court pursuant to the order of the Court to avail his liberty. The reason for such a direction by the Court is obvious. The persons like petitioner, who has wide contact across the border if allows to possess the passport with him, there is every possibility to flee away from the criminal justice system. The country is facing a peculiar crisis namely our criminal legal system is not grown enough to secure a person, who flees away from the country and takes shelter

abroad. Under the guise of protecting the fundamental right, the persons accused of committing grave offences like money laundering and other economic offences cannot be allowed to go abroad, unless there is a strong case to permit him to go abroad and stay away from investigation, which is pending.

19. While considering the petition filed before the trial court as well as this Court and the affidavit filed pursuant to the direction of this Court, this Court is fully satisfied that the petitioner is not really intended to go abroad for the purpose of what he has stated in the petition and affidavit. When the petitioner has not come forward with necessary particulars to take a decision by this Court whether the plea is genuine or not, except to draw adverse interference, there is no option to this Court. Hence, these petitions are liable to be dismissed.

20. Accordingly, these petitions are dismissed.

Sd/-

Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

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To

1.XI Additional CBI Court, Chennai.

2.The Superintendent of Police, CBI,ACB, Shastri Bhavan,
Chennai 600 006.

3.The Special Public Prosecutor (CBI Cases),
High Court, Madras.

+1cc to Mr.B.Sathya Sundar, Advocate SR.No.12841

+1cc to Mr.B.Sathish sundar, Advocate SR.No.12842 (07/03/2018)

Cr1.R.C.Nos.104 and 105 of 2018

GN (06/03/2018)