

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.13316 of 2018

S.Kannan ... Petitioner/ Accused-7

/Vs/

1. The Inspector of Police
Central Bureau of Investigation,
Special Crime Branch,
A-Wing, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090. ... 1st Respondent/Complainant
2. Regional Passport Authority,
8th Block, 80 Feet Road, Koramangala,
Bengaluru,
Karnataka-560095. ... 2nd Respondent/Respondent
[2nd respondent is impleaded as per order in
Crl.M.P.No.11162 of 2018 in Crl.O.P.No.13316 of 2018,
dated 24.08.2018].

PRAYER: Criminal Original Petition filed under section 482 of the Criminal Procedure Code, to call for the records and set aside the order of return dated 16.04.2018, passed in Crl.M.P.SR.No.807/2018 in C.C.No.3 of 2011 on the file of Special Judge CBI Cases at Coimbatore returning the application filed seeking permission to obtain passport and further issue necessary direction to the Hon'ble Special Judge CBI Cases at Coimbatore.

For Petitioner : Mr.Sundar Mohan

For Respondent 1: Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases for R1

For R2 :Mr.A.Veeramani,
Central Government Counsel

O R D E R

The present petitioner has been filed challenging the order of return of the petition in CrI.M.P.SR.No.807 of 2018 in C.C.No.3 of 2011 pending on the file of the learned Special Judge for CBI Cases, Coimbatore dated 16.04.2008 and he had consequently prayed for a direction to the learned Special Judge to direct the Passport Authority to issue the passport to the petitioner.

2. The petitioner is arrayed as A-7 in C.C.No.3 of 2011 pending on the file of the learned Special Judge for CBI cases, Coimbatore for offences under Sections 120(B), r/w Section 460, 467, 468 and 471 of IPC and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act.

3. The case is in respect of allegations of fraud and loan transactions which took place while the petitioner was working as Branch Manager during the period in year 2006 to February 2007 at Vijaya Bank, Tirupur Branch. The petitioner is presently working as Assistant General Manager at the Personal Department Head of the Vijaya Bank at Bangalore. The petitioner's son Mr.K.Aditya is pursuing higher studies at California, United States of America and the petitioner had intended to travel to United States of America to meet his son. He had to apply for a passport and since he is an accused in this case, the petitioner had filed an application before the trial Court under Section 22 (A) of the Indian Passport Act r/w Notification issued by the Ministry of the External Affairs dated 20.05.1993 in GSR No.570 E. The notification prescribes that the applicant involved in a criminal case has to obtain permission from the Court before which his facing trial or where the case against pending. The petitioner had made an application before the learned Special Judge for CBI Cases, Coimbatore and the Court had returned the application on 16.04.2008 with the following observation.

" The Petitioner relayed on the citation reported in 2003 AIR (Guj) 108 for representing this petition. On perusal of the above citation, the Hon'ble High Court invoking under Article 226 of Constitution of India and pass orders. Therefore, this petitioner very well approach the Hon'ble High Court of judicature Madras for getting favourable orders"

4.The learned counsel appearing for the petitioner would submit that, there is no Presiding Officer in the trial Court and there is no progress in the trial. He would further submit that though the earlier permission was sought for to visit United States of America to attend his son's convocation, due lapse of time the original prayer had become infructuous. However, he would also submit that the petitioner as a dutiful father wish to go to United States of America to visit his son's college and in the interest of rendering him moral support and encouragement. He would also submit that by letter dated 02.05.2017, the respondent has also informed the Court that the request of the petitioner to travel abroad may be considered subject to the satisfaction of the trial Court. He would also submit that, due to non availability of the Presiding Officer there is no progress in the trial and would submit that the petitioner had intended to travel out of the country for few months only, since he may not be able to avail long leave from his employer Vijaya Bank. Further he would submit that the petitioner has also filed an affidavit of undertaking that he will not be in any way hinder or will be the cause for delaying the trial and in the affidavit and he has also given the following undertaking:-

- a) That the trial during my travel abroad would not be delayed on any account citing my absence and due to my non appearance.
- b) That I would not dispute my identity in the trial.
- c) That the witnesses can be examined in my absence and in the presence of my Counsel, who would cross examine the witnesses whenever required.
- d) That I would travel for a period of 2 months after giving due intimation to the trial Court regarding the exact date of departure and arrival.

5. The learned counsel for the petitioner would further submit that though his travel to be only for a period of two months and would request that if only, the passport valid for two years, the American Embassy will consider grant of Visa and if the validity of the passport is for a shorter duration there is possibility of Visa being rejected. He would also submit that the petitioner is prepared to abide by any stringent condition that may imposed on him.

6. The learned Special Public Prosecutor for CBI Cases would submit that there are totally 27 witnesses in the case and that 3 witnesses have been examined so far and due to the non availability of the Presiding Officer the trial has got stalled. However, he would further submit that any movement there is a possibility of appointment of the Presiding Officer and in such circumstances trial should not be delayed due to the non availability of the petitioner before the trial Court and that the petitioner shall give necessary undertakings that he will not delay the trial on any account. He would also submit that in the event of direction being issued by this Court to the Passport Authority for issuance of the Passport and he is allowed to travel United States of America, the petitioner shall furnish the details of his travel and also the place of stay in United States of America and he should also produce the Passport before the trial Court as soon as he comes back from United States of America and he should also undertake that at no event he will be the cause for delaying the trial.

***7. Taking into consideration the facts of the case and specifically the submissions made by the learned counsels with regard to extension of validity of passport since it has been submitted that if only the passport is valid for two years the Embassy has to consider the grant of visa and also taking into consideration the affidavit of undertaking filed by the petitioner that he has to restrict his travel period only for a period of two months, this Court directs the Passport Authority to consider the passport application of the petitioner and issue the passport in terms of Clause (a)(i) and (iv) of the notification dated 25.08.1993 in G.S.R.No.570 E Ministry of External Affairs for a period of two years. However, this Court makes it clear that the travel of the petitioner shall be only for a period of two months subject to grant of visa by the concerned Embassy.**

8. With the above observations, this Criminal Original Petition is ordered with further conditions.

i) the petitioner shall strictly abide by undertaking given by him before this Court regarding progress of trial.

ii) the petitioner shall furnish the details of travel and place of stay at United States of America.

(iii) the petitioner shall surrender the original passport before the trial Court immediately on return from United States of America.

****iv) the petitioner shall furnish bank guarantee to the tune of Rs.25,00,000/- (Rupees Twenty Five lakhs only) before the trial court.**

Sd/-
Assistant Registrar(CS V)

***,** Incorporated as per order
dated 31/08/2018
in CrI.O.P.No.13316 of 2018**

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
Central Bureau of Investigation,
Special Crime Branch,
A-Wing, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.
2. The Regional Passport Authority,
8th Block, 80 Feet Road, Koramangala,
Bengaluru, Karnataka-560095.
3. The Special Judge CBI Cases,
Coimbatore.
4. The Special Public Prosecutor for CBI Cases
High Court of Madras.

+1cc to M/S.A.Veeramani, CGC, Sr.58682
+1cc to M/S.SundarMohan, Advocate Sr.58591

CrI.O.P.No.13316 of 2018

srg 11/09/2018