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

+ W.P.(CRL) 2725/2018 and Crl. M.A. No.31882/2018 (stay)

T S SREEKANTHAN

..... Petitioner

Represented by: Mr. Siddharth Aggarwal, Ms.
Stuti Gujral and Mr. Nikhil
Pillai, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Ms. Rajdipa Behura, Spl. P.P
for CBI with Ms. Kriti Handa,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

05.10.2018

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1. Aggrieved by the order dated 29th August, 2018 whereby the application filed by the petitioner seeking release of his passport and permission to travel to Singapore in September, 2018 for a period of one month has been declined, the petitioner prefers the present petition. Case of the petitioner is that his son has recently taken up an employment in Singapore as Director (Insights) at Brandscapes Consultancy Pte. Ltd. and wants help of the petitioner to settle himself over there.

2. Vide the impugned order, learned Trial Court noted that accused No.4 had filed an application for turning an approver and grant of pardon thus,

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further proceedings in the matter would depend upon the order on the said application. If the said application is dismissed, matter will be fixed for arguments on charge and at the time of framing of charge the petitioner would be required to plead guilty. Hence his presence would be mandatory. Further, the son the petitioner is major aged 35 years and it is not a pressing need of the petitioner to go to meet his son.

3. Learned counsel for the petitioner seeking release of passport and permission to travel abroad relies upon the decisions of this Court reported as ILR (2009) II Delhi 48 Shri Chandramauli Prasad & Ors. vs. State of Delhi and 2012 SCC OnLine Del 1656 G. Vetrivel Sami @ Swami vs. CBI.

4. Learned Spl. P.P. for CBI on the other hand vehemently opposing the release of the passport and permission to travel abroad relies upon the decision of the High Court of Madras reported as MANU/TN/2153/2014 K. Zahir Hussain vs. Inspector of Police, CBI, ACB. It is contended that the proceedings before the learned Trial Court are going on and the finding of the learned Trial Court that the petitioner would be required to answer the charge cannot be said to be without any basis. Hence, no permission be granted to the petitioner to travel abroad at this crucial juncture of the trial.

5. Undisputed facts of the case are that the complaint in question was received on 16th November, 2015 and after a preliminary inquiry the present RC being RC No.1(E)/2016/CBI/BS&FC was registered on 21st January, 2016. Admittedly, the petitioner was not arrested during the course of investigation and charge sheet was filed without arrest on 10th April, 2018.

6. It is the case of the petitioner that during this period when the investigation was pending and charge sheet was to be filed, petitioner *W.P.(CRL) 2725/2018*

travelled abroad a number of times and neither his passport had been taken nor any restriction was placed on the travel of the petitioner. On filing of the charge sheet and issuance of summons when the petitioner appeared before the learned Special Court, he was granted bail subject to the condition that he would deposit his passport with the learned Trial Court and not leave the country without prior permission of the learned Trial Court, hence, necessitating the application seeking release of passport and permission to travel aboard.

7. Petitioner has placed on record adequate documents to show that the petitioner's son namely Sreekanthan Nair has taken up employment in Singapore. Petitioner was not taken into custody either during the investigation or trial.

8. From the orders of the learned Trial Court it is evident that applications under Section 207 Cr.P.C. for supply of documents are still pending before the learned Trial Court. One of the accused, that is, accused No. 4 has filed an application seeking pardon and to turn approver which is pending consideration. No objection to the said application has already been tendered by the petitioner by way of his statement before the Court. Thus the finding of the learned Trial Court that immediately on decision of the said application, the petitioner will be required to answer the charge is apparently unfounded because only after complying with the provisions of Section 207 Cr.P.C., arguments on charge would begin before the learned Trial Court which would be by the learned counsel and thereafter only the petitioner would be required to answer the charge.

9. Learned counsel for the CBI has placed emphasis on the decision in case K. Zahir Hussain (supra) wherein the petitioner therein had sought permission to go to Dubai and the learned Trial Court noted that the petitioner therein had no record to show that he was doing Garment Business at Dubai nor produced any documents to show that he had to visit Dubai necessarily. In the said case the petitioner therein was not even issued a passport and he challenged the same on the ground that it infringed the fundamental right under Article 14 of the Constitution of India to which the Court held that the order of the Government of India refusing to issue passport to the petitioner therein offends Article 14 of the Constitution of India. In the said decision Single Bench of the Madras High Court held as under:

“21. It is to be noted that although, 'Right To Travel Abroad' is a fundamental right and the same cannot be deprived except by an established 'Due Process of Law', yet this Court is of the considered view that the 'Right To Travel Abroad' is not an absolute one. As a matter of fact, a Court of law is to look into the entire gamut of the facts and circumstances of the case, which the Petitioner/A5 is involved, gravity of the crime, etc. As such the 'Right To Travel Abroad' is not an absolute right in the considered opinion of this Court and the same is subject to certain limitations. When the Petitioner/A5, is involved in a serious crime in Cr. Nos. RCMA1/2012 and RC 0047(A)/2012 on the file of the respondent and also especially in C.C. No. 1 of 2014 on the file of the trial Court, this Court is not in a position to accede to the request of the petitioner to travel abroad for the purpose of attending his business work at Dubai office for his internal audit and other official works.”

10. During the pendency of the investigation, there was no restriction placed on the travel of the petitioner and only pursuant to the summons on taking cognizance of the offence when the petitioner appeared and was granted bail, the passport was retained by the learned Special Judge and he was directed to seek permission to travel abroad. The petitioner would be within his right to seek the said permission. The petitioner does not seek liberty to go to Singapore for an indefinite period. His case is that in case the passport is released he would require two-three weeks' time to obtain visa and thereafter travel for one month. In the interregnum the petitioner can be exempted from appearing through counsel who would be there to address arguments on the charge.

11. In view of the facts noted above this Court deems it fit to direct release of the passport and also grant permission to the petitioner to travel to Singapore. It is, therefore, directed that the learned Trial Court will release the passport of the petitioner to him who would get his visa obtained from the concerned Embassy and on receipt of the visa he would place on record by way of an affidavit his itinerary before the learned Trial Court indicating the date of leaving the country and arrival back in India. The affidavit would also disclose the name, address and phone number of the son of the petitioner where the petitioner would be residing so that in case required petitioner can be contacted. Petitioner will also file an affidavit before the learned Trial Court indicating that in the interregnum any argument made by the counsel for the petitioner or any application moved by the counsel for the petitioner, will not be disputed by the petitioner during the course of trial and no adjournments will be granted on the count that the petitioner is not in

the country. On return back to India, the petitioner will surrender his passport to the learned Special Judge without prejudice to his rights to seek modification of the conditions imposed while granting bail subsequently.

12. Petition and application are disposed of.

13. Order dasti.

MUKTA GUPTA, J.

OCTOBER 05, 2018
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