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

+ **W.P.(C) 3900/2019 & 17686-87/2019**

VINOD KUMAR ASTHANA

..... Petitioner

Through: Mr Nikhil Majithia, Mr Abhir
Datt and Ms Mahima Wahi,
Advocates.

versus

**JOINT SECRETARY (PSP) AND CHIEF PASSPORT
OFFICER AND ANR.**

..... Respondents

Through: Mr Vikas Mahajan, CGSC with
Ms Aakanksha Kaul, Mr
Aakash Varma and Mr Deepak
Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.04.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 01.04.2019 passed by respondent no.1 [the Joint Secretary (PSP) & Chief Passport Officer (Central Government)] in exercise of powers under Section 11 of the Passports Act, 1967. The petitioner also impugns the order dated 02.11.2018 passed by respondent no.2 (Regional Passport Officer) impounding the petitioner's passport under Section 10(3)(e) of the Passports Act, 1967.

2. The said action has been taken against the petitioner consequent

to the request of the Central Bureau of Investigation (CBI) and in the backdrop of a criminal case instituted against the petitioner. It is stated that CBI had lodged a FIR (FIR 220/2017 E0013 of 2017 dated 05.07.2017) under Section 120B read with Section 420 of the Indian Penal Code, 1860 read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Thereafter, on 16.04.2018, the CBI had also filed a chargesheet before the Special Judge, CBI-01 Patiala House Courts.

4. The learned Special Judge took cognizance of the said chargesheet on 30.07.2018. Thereafter, on 31.08.2018, the petitioner had applied for the grant of regular bail, which was granted to the petitioner on 06.10.2018. The petitioner was further called upon to surrender his passport to the concerned Court. In compliance with the said condition, the petitioner had deposited his passport with the learned Special Judge on 06.10.2018.

5. Thereafter, the petitioner filed an application before the concerned Court seeking permission to travel to Pennsylvania and Boston, United States of America during the period 03.05.2019 to 16.06.2019 and accordingly, sought release of his passport. The petitioner stated that the purpose of the visit was to attend convocation ceremony of his son. The said application was allowed by an order dated 28.03.2019 subject to various conditions. Paragraph 19 of the said order indicating the conditions imposed on the petitioner is set out below:-

“i. Applicant/A-13 Vinod Kumar Asthana shall furnish FDR for a sum of Rs. Twenty Five Lacs (Rs.25 lacs) which shall be liable to be forfeited in favour of Government of India in case the applicant/A-13 Vinod Kumar Asthana violates any of the conditions of this order.

ii. The applicant/A-13 Vinod Kumar Asthana would be returning during summer vacations. Therefore, the applicant/A-13 Vinod Kumar Asthana shall inform the IO about his arrival in India within 48 hours of his return and shall surrender his Passport to the IO. Thereafter, the IO shall deposit with this court the Passport of A-13 Vinod Kumar Asthana within two days of reopening of the courts.

iii. In any eventuality, applicant/A-13 Vinod Kumar Asthana shall not request for extension of his stay abroad.

iv. The applicant/A-13 Vinod Kumar Asthana shall not tamper with the evidence or influence witnesses in any manner and shall not use the permission granted to him contrary to the rules.

V. During his stay abroad, applicant/A-13 Vinod Kumar Asthana shall be represented before the court by his counsel and no adjournment shall be requested on his behalf due to his absence.

vi. The applicant/A-13 Vinod Kumar Asthana has already given the details of his stay at Pennsylvania and Boston, United States of America and contact number used by him during that period. He will also provide a mobile number on which he can be contacted during this period.

vii. The passport of the applicant /A-I3 Vinod Kumar Asthana at present is impounded by RPO, Gaziabad. Appeal against the said order is pending before the Appellate Authority. The passport shall be returned by this court to the applicant/A-13 Vinod Kumar Asthana

only if the impugned order dated 02.11.2018 impounding his passport is set aside and not otherwise. The permission given to applicant /A-13 Vinod Kumar Asthana to visit abroad is subject to other applicable rules and shall not be treated as a direction to any other authority including the appellate authority which is hearing the appeal filed by the applicant/A-13 Vinod Kumar Asthana and is only permission/no objection from the side of this court for applicant/A-13 Vinod Kumar Asthana to visit Pennsylvania and Boston, USA from 03.05.2019 to 16.06.2019.”

6. In the meanwhile, by the impugned order dated 02.11.2018, the Regional Passport Officer impounded the petitioner’s passport solely on the ground that a criminal case is filed against the petitioner. Aggrieved by the same, the petitioner preferred an appeal to the Central Government under Section 11 of the Passports Act, 1967. However, the said appeal was also rejected by the impugned order dated 01.04.2019.

7. The learned counsel appearing for the petitioner submits that mere filing of the criminal case does not necessarily entail impounding of the passport, and the concerned authority is required to take into account other factors before considering the said measure.

8. The learned counsel appearing for the petitioner has relied on the decision of the Coordinate Bench of this Court in ***Manish Kumar Mittal v. Chief Passport Officer & Anr.: (2013) 202 DLT 317***, wherein it has been held that “*even if a criminal case is pending against a person that by itself does not require the Regional Passport Officer to impound/revoke the passport in every case. It is only in*

appropriate cases and for adequate and cogent reasons that such an order can be passed.”

9. The aforesaid decision has also been followed by this Court in ***Siddhartha Ashish Dey v. Union of India & Ors.: W.P.(C) 7339/2015, decided on 08.12.2015***, whereby the Court had reiterated its view that “*pendency of a criminal case is not ipso facto a ground under Section 10(3)(e) of the Passports Act for impounding of the passport.*”

10. This Court is of the view that in the given facts of the present case, impounding the passport is not warranted considering that the petitioner had already been called upon to deposit the same with the concerned Court. Further, the permission has already been granted to the petitioner to travel overseas.

11. It is relevant to note that the petitioner’s passport has not been cancelled. Since, the petitioner had already been granted travel overseas, this Court considers it apposite to direct the respondents to set aside the impugned orders impounding the petitioner’s passport. The petitioner would be at liberty to travel overseas on his current passport subject to compliance of the conditions as imposed by the learned Special Judge. It is, however, clarified that this would not preclude the respondents from taking other measures in accordance with law.

12. The petition is disposed of in the aforesaid terms. All pending applications also stand disposed of.

13. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

APRIL 16, 2019

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