IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.39104 of 2021 (O&M)
Decided on: 14.10.2021

Gaurav Kirpal

....Petitioner

Versus

Assistant Director, Directorate of Enforcement

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Saurabh Kapoor, Advocate for the petitioner.

Mr. Satya Pal Jain, Sr. Standing Counsel
with Mr. Sanjay Vashisth, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.34352 of 2021

Prayer in this application is for preponing the date fixed in the main petition.

Heard.

For the reasons stated in the application, the same is allowed and the main case is taken up today for hearing.

CRM-M No.39104 of 2021 (O&M)

Prayer in this petition is for setting-aside the order dated 04.08.2021 passed by the Special Judge, PMLA, Chandigarh, in Complaint Case No.2 of 2018 in ECIR/06/CHD/2016 dated 19.09.2016, titled as *"Assistant Director (PMLA) vs Ashu mehra and others"* filed under Sections 44 and 45 of the Prevention of Money Laundering Act, 2002, vide which the application filed by the petitioner seeking permission of the Court to go abroad and visit USA and Dubai was dismissed.

Counsel for the petitioner could not dispute that vide order dated 19.08.2021 passed in CRM-M No.33804 of 2021 filed by the petitioner, the similar prayer has already been dismissed by this Court, by passing the following order:-

> *"Prayer in this petition is for setting-aside the order dated 04.08.2021 passed by the Special Judge, CBI, Chandigarh in FIR No.RCBD1/2016/E/0007 dated 08.08.2016 registered under Sections 120-B read with Section 420 of the Indian Penal Code, 1860 (in short 'IPC') and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, at Police Station CBI, BS&FC, Chandigarh, vide which the application filed by the petitioner seeking permission of the Court to go abroad and visit Dubai and USA was declined.*
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> *Counsel for the petitioner has argued that the petitioner is in the business of import and export of readymade garments and the FIR was registered on a complaint given by the Indian Overseas Bank, Zonal Office, Delhi, to Central Bureau of Investigation (CBI) for the fraud committed by Assistant Manager, Forex Department, Indian Overseas Bank, Sector 7, Chandigarh along with other accused including the petitioner.*
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> *Counsel for the petitioner has further submitted that the petitioner was a frequent traveller to various countries in connection with his business of readymade garments and till 2016, he was visiting abroad and on 10.08.2016, when he was going to Dubai, he was stopped at the Immigration deck of IGI Airport, New Delhi on the basis of the restrictions imposed by the CBI.*
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> *Counsel for the petitioner has also submitted that the passport of the petitioner was released by the Court on 16.11.2017. It is further argued that the petitioner on an earlier occasion has filed application before the Special*

Court, CBI to grant permission to travel abroad, which was declined vide order dated 07.02.2019 and the petitioner preferred CRM-M No.7910 of 2019, which was later on withdrawn on 28.07.2021, with liberty to apply fresh before the trial Court. It is further argued that in the intervening period, the Special Court, PMLA, Chandigarh has granted permission to the petitioner to travel abroad i.e. Dubai and USA, vide order dated 08.02.2019. Counsel for the petitioner has, thus, prayed that the CBI, Special Court, CBI, Chandigarh has wrongly declined the prayer to allow him to travel abroad.

Reply on behalf of the CBI, was filed before the Court, in the first application, which is relied upon by the petitioner as Annexure P-8 and in para 9-F, it was submitted that all the immovable and movable assets of the petitioner were seized by the Indian Overseas Bank and total of theses properties is Rs.12.35 crores as the business of the petitioner in India is not going well, there is every possibility that the petitioner may flee from the country and would never come back to India to face the legal action.

The trial Court, thereafter, vide impugned order dated 04.08.2021, dismissed the application by passing the following order:-

> *"5. Learned counsel for the applicant argued that earlier also similar applications had been filed by the applicant and while the CBI court had dismissed his application, the PMLA court had allowed his application. Against the dismissal of application by the CBI Court, a revision had been filed, but withdrawn with the right to contest the application before the Trial Court. It was argued that the applicant needs to go abroad to conduct his business and recover his money and do new business dealings. He has even now filed his schedule of travel whereby he needs to go to Dubai for six days and USA for fourteen days. It was*

further argued that it is the right of the applicant/accused to travel abroad and this right cannot be curtailed. In support of this contention, reliance was placed on the principle laid down by Hon'ble Calcutta High Court in case titled Sri Amarendra Nath Ghosh vs. State of West Bengal and another, C.R.R. No.2199 of 2013, decided on 04.12.2013 and Hon'ble Punjab & Haryana High Court in case titled Ryan Augustine Pinto vs. Central Bureau of Investigation, CRM-M No.55170 of 2018 decided on 22.02.2019.

6. Learned Special Public Prosecutor for the CBI meanwhile argued that the accused is involved in a serious offence amounting to loss of about 300 crores to the Indian Overseas Bank. The applicant is the main accused and has only filed this vague application to escape the trial and flee the country. The applicant has not given any dates of his travel and wants a blanket permission to go abroad as and when he feels to do so. Wife of the accused, who was co-accused in a money laundering case, has already fled the country and was declared proclaimed offender. Any business transactions, the applicant wants to do, can be done on-line, which in the present scenario is being done by all companies. It was further submitted that from the proceeds of crime, the accused have already purchased property in UAE which stand attached. One similar application of co-accused Utkarsh Pahwa in money laundering case already stands dismissed by the court and similar is the present application which also deserves dismissal.

7. After hearing the arguments of the learned counsels, it comes to notice that as per documents on file, the accused is involved in a serious offence and as per the contentions of the CBI, the acts of the accused and other accused has caused loss to the tune of about Rs.299 crores to the Indian Overseas Bank. Accused has filed a simple application seeking permission to go abroad to do business dealings, but in his entire application there is no mention of any company with which the accused is required to do any dealings. There is no mention as to which company owes any money to the applicant/accused. There is no mention as to

> *whether he has received any invitation to visit any company. There is no mention as to where his goods have got stuck and there is nothing which would make the matter clear about the needs of the accused to go abroad.*
>
> *8. While in his application, the accused has stated that he wants to go abroad to meet various companies with whom he has business dealings to export garments. But in the affidavit of his schedule filed by him on the previous date, it was mentioned by him that he wants to go to USA to inspect the import material comprising of Walnuts, which he wants to export from USA. It seems that the only intention of the accused is to seek permission to go abroad and then try to flee and avoid the trial. It is not disputed that the wife of accused, who is co-accused in money laundering case, has already fled and was declared a proclaimed offender. It is also not disputed that similar application of the co-accused in ED case stands dismissed. Merely having a right to travel abroad does not entitle the accused to the relief sought by him and thus, the case laws as cited, do not apply to the facts and circumstances of the present case and are distinguishable. The present accused is almost on similar footings as his co-accused Utkarsh Pahwa, in money laundering case, whose similar application already stands dismissed, vide separate order of this court on 23.07.2021. As a result, finding no merit in the present application, the same stands dismissed."*

Counsel for the petitioner has also submitted that till 2016, the petitioner was travelling abroad and it is only after the registration of the FIR, initially his passport was withheld, which was released by this Court and, therefore, the petitioner be granted permission to travel abroad.

Learned senior counsel for the respondent – CBI, has heavily opposed the submissions made by counsel for the petitioner on the ground that the petitioner in connivance with other co-accused has committed a fraud of Rs.300/- crores and further argued that there is every *possibility that the petitioner may flee from the country if, granted permission to travel abroad.*

After hearing the counsel for the parties and going through the documents relied upon by the petitioner, I find that the charge-sheet has already been presented before the trial Court and upon framing of the charges, the trial is likely to commence soon as it is already delayed for a period of about 05 years. In the charge-sheet there are serious allegations against the petitioner and it is the case of the prosecution that a fraud of Rs.300/- crores has been committed by the accused in conspiracy with each other. As per the allegations of the charge-sheet, the petitioner – Gaurav Kirpal is the Director of M/s. Sai Bhakti Impex Private Limited and proprietor of M/s. Best Exports and is also authorized signatory of M/s. Omkara Worldwide Traders Private Limited and 3 fraudulent buyer's credit were issued showing M/s. Sai Bhakti Impex Private Limited as applicant. As per the accounts of M/s. Sai Bhakti Impex Private Limited, M/s. Best Exports and M/s. Omkara Worldwide Traders Private Limited, payments were made for bearing the expenses of Air travel tickets of main accused Ashu Mehra and his family members. It is also stated in the charge-sheet that from the accounts of the above-mentioned firms maintained with Indian Overseas Bank, Chandigarh and IndusInd Bank, Ludhiana, funds have been credited in the accounts of M/s. Vision Procon and M/s. Heights International, which ultimately formed part of Outward Remittances and thus, the allegations against the petitioners are that he is an instrument in siphoning off the funds, therefore, finding no illegality in the impugned order that the petitioner is involved in serious fraud case amounting to a loss of Rs.300/- crores to Indian Overseas Bank and also in view of the fact that the petitioner has moved an application *just to escape facing the trial and may flee from the process of law and in view of the fact that the trial Court has also observed that from the proceeds of the crime, the accused have already purchased property in UAE, which also stands attached, the present petition is dismissed."*

In view of the above, I find no ground to entertain this petition and the same is accordingly, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

14.10.2021
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No