Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1262 OF 2022
WITH
WRIT PETITION NO. 1263 OF 2022

Dharmesh Bothra ...Petitioner
Versus
State of Maharashtra & anr. ...Respondents

Ms. Krupali Hiren Rajani, for the Petitioner.
Mr. A. R. Patil, APP for the State in WP/1262/2022.
Mr. S. R. Agarkar, APP for the State in WP/1263/2022.
Mr. Hiten Venegaonkar, for Respondent no.2.

CORAM: N. J. JAMADAR, J.
DATED : 29th APRIL, 2022

ORDER:-

1. Rule. Rule made returnable forthwith and in the context of the challenge, with the consent of the learned Counsels for the parties, the petitions are taken up for hearing and final disposal at the stage of admission itself.

2. The petitioner, who is arraigned as accused no.14 in PMLA Special Case No.4/2018 and as accused no.7 in PMLA Special Case No.9/2018, has invoked the writ jurisdiction of this Court being aggrieved by the orders passed by the learned Special Judge (PMLA) rejecting the application preferred by the petitioner seeking permission to travel to USA between 1st May, 2022 to 30th May, 2022.

3. Shorn of unnecessary details, the facts leading to these petitions can be stated as under:

(a) The Central Bureau of Investigation (CBI) registered FIR No.RCBSM2018E0001 dated 31st January, 2018 against Mr. Nirav Modi, Mehul Choksi and others for the offences punishable under Sections 120B and 420 of the Indian Penal Code, 1860 ("the Penal Code") and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ("the Act, 1988"). Charge-sheet was lodged on 14th May, 2018, alleging the complicity of 24 entities/persons for the offence of cheating and criminal conspiracy punishable under Section 120B, 420 and 409 of the Penal Code and Section 13(2) read with Section 13(1)(c) and (d) of the Act, 1988, which are scheduled offences under Paragraph 1 and 8 of Part-A of Schedule of Prevention of Money Laundering Act, 2002 ("PMLA"). Eventually, the Directorate of Enforcement (ED) entered into investigation of the offence of money laundering as defined under Section 3 against Mr. Nirav Modi and others.

4. The investigation allegedly revealed that Nirav Modi and his associates had issued fraudulent LOUs. The LOUs amounts were utilized for making payment to their overseas supplier/ companies. The funds of LOUs obtained fraudulently were siphoned off through their alleged overseas suppliers. The export and import transactions were not genuine. The invoices of export and import were overvalued to the huge extent so as to inflate the balance sheet and procure high credit facilities from the banks.

(b) The petitioner was implicated with the allegations that his statement was recorded under Section 50(2) and (3) of the PMLA Act, 2002. The petitioner stated that his companies were used for layering and rotating export and import of diamond jewellery of Gitanjali and Firestar Companies. In reality, the same was sold and purchased within the group companies. Those fraudulent transactions carried out only to inflate the turn over. In return, the petitioner was promised 0.15% of the turn over.

(c) In the backdrop of the aforesaid allegations, the petitioner came to be arrested and eventually released on bail. One of the conditions on which the petitioner was released on bail was that he shall not leave the country without permission of the Court.

(d) The petitioner preferred application seeking permission to travel to USA between 1st May, 2022 to 30th May, 2022 as the graduation ceremony of his son Shwetanc Bothra, who studies in PennState College of Arts and Architecture, scheduled on 6th and 7th May, 2022 at Pennsylvania State University. It was asserted that the petitioner is the sole parent as the mother of Shwetanc passed away. The petitioner has been regularly attending the proceedings before the Court. The petitioner has roots in India. There is no material against the petitioner except the confessional statement. Even the petitioner has not been named as an accused in the FIR by CBI.

(e) The application was resisted by respondent no.2. It was contended that there are specific and grave allegations against the petitioner. The principal accused Nirav Modi, Mehul Choksy and others are absconding. In the event the petitioner is allowed to travel to USA, there is strong possibility of the petitioner fleeing away from justice and not returning to India.

5. By the impugned order, the learned Special Judge was persuaded to reject the application, *inter alia,* holding that the magnitude of the fraud, for which the petitioner was arraigned, was huge i.e. to the tune of Rs.6498.20 Crores. After adverting to the role attributed to the petitioner of assisting in layering and rotating the money and the reasonability of the apprehension expressed on the part of the ED that the petitioner may abscond and not return to India and also tamper with evidence, the learned Special Judge declined to grant permission to travel abroad.

6. I have heard Ms. Rajani, the learned Counsel for the petitioner and Mr. Venegaonkar, the learned Counsel for defendant no.2 – ED.

7. Ms. Rajani submitted that the learned Special Judge rejected prayer of the petitioner to travel abroad unmindful of the grave consequences on the personal liberty of the petitioner. Ms. Rajani would urge that the fact that the fraud allegedly involves huge amount, could not have been used as a refrain to deprive the personal liberty of the petitioner when the role attributed to the petitioner is of minor nature. Emphasis was laid on the fact that the petitioner was not named as accused in CR No.RCBSM2018E0001, registered on 31st January, 2018. The special Judge, according to Ms. Rajani, also lost sight of the fact that the petitioner had been regularly attending the proceedings before the PMLA Court and there was no substance in the apprehension of the prosecuting agency that the petitioner would abscond.

8. In order to lend support to the aforesaid submissions Ms. Rajani placed a strong reliance on the Division Bench judgment of the Madras High Court in the case of ***Karti P. Chidambaram***

vs. Bureau of Immigration, [W.M.P. No.3031 of 2018 in W.P. No.21305 of 2017, dated16/02/2018] and the judgment of the Supreme Court in the case of ***Satish Chandra Verma vs. Union of India and others [Civil Appeal No.3802 of 2019, dated 9/4/2019].***

9. Mr. Venegaonkar, the learned Counsel for respondent no.2 – ED stoutly submitted that the context of the matter cannot be lost sight of. Four co-accused are yet at large. Investigating agency has made as many as nine extradition requests against Nirav Modi and three others. The progress of the trial is prejudicially affected on account of the absence of the absconding accused. It was further submitted that the learned Special Judge committed no error in factoring in the magnitude of the fraud.

10. Mr. Vegegaonkar further urged that one of the absconding co-accused is reportedly based in USA. Certain proceedings are underway in USA regarding the assets of the PNB. The presence of the petitioner in USA, in the aforesaid context, may prejudicially affect the interest of the prosecution. Even otherwise, according to Mr. Venegaonkar, the cause of attending the graduation ceremony cannot be said to be a reason worthy of consideration, especially in the backdrop of the nature of the accusation.

11. With the development of constitutional values, the right to liberty, including the right of free travel, is recognized as an important facet of fundamental right. Personal liberty, guaranteed under Article 21, is construed in widest terms. It subsumes in its fold a variety of rights which constitute the personal liberty. Right to travel abroad is recognized as a facet of the right to life and liberty guaranteed under Article 21. Deprivation of the right to travel abroad therefore must satisfy the test of reasonable restrictions.

12. The question that wrenches to the fore, where permission to travel abroad is sought by an accused, is whether in the facts and circumstances of the case and the situation in life in which the accused finds himself, the deprivation of the right to travel abroad would constitute an unresonable restriction on the right to life and personal liberty. The answer hinges on a number factors. The nature of the accusation and the attendant facts; is the trial likely to be affected; is there possibility of tampering with the evidence and deflating the course of justice, whether the applicant poses a flight risk, are few of the pertinent factors.

13. First and foremost, it is necessary to note that the allegations against the petitioner are of money laundering by employing the device of facilitating the layering and rotating of export and import of diamond jwellery of Gitanjali and FireStar Group Companies, through his companies. This was allegedly done to inflate the turn over so that the companies of the principal accused could fetch more credit. In return of such facilitation, the petitioner was allegedly promised 0.15% of the turn over. In a general criminal conspiracy and mammoth fraud of such magnitude, the roles attributed to each of the confederates may be different. However, the larger picture is required to be kept in view. The submission on behalf of the petitioner that there is no incriminating material against the petitioner, thus, cannot be readily accepted.

14. The fact that four of the co-accused are absconding, and despite continuous efforts in getting them extradited, they are still at large, cannot be said to be immaterial or inconsequential. At this juncture, the apprehension entertained by the investing agency that there is likelihood of the petitioner making himself scares is required to be appreciated in the context of the abscondance of the principal accused.

15. The submission that the petitioner is being made a scapegoat while the principal accused are at large, appears attractive. However, the overall context of the nature of the accusation, the magnitude of the fraud, the abscondance of the co-accused cannot be lost sight of.

16. If viewed through the aforesaid prism, no fault can be found with the impugned order declining to grant permission to travel to USA. Hence, the petitions deserve to be dismissed.

17. The petitions stand dismissed.

[N. J. JAMADAR, J.]