IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2022
PRONOUNCED ON : 18.02.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.Nos.880 & 2346 of 2022

Mr.M.S.Raghavan ...Petitioner in both Crl.OPs

Vs.

1. The Inspector of Police,
   Central Bureau of Investigation,
   Banking Security and Fraud Cell,
   Bangalore.
   (Ref.Crime No.9 of 2018)

2. The Secretary,
   Ministry of Home Affairs,
   Government of India,
   South Block, New Delhi 110001
   (Ref.LOC No.1842564)

...Respondents in CRL.O.P.No.880 of 2022

1. Directorate of Enforcement,
   Represented by its Deputy Director,
   Chennai Zone-I,
   Government of India,
   Ministry of Finance, Department of Revenue,
   2^{nd} and 3^{rd} Floor, C Block, MurugesaNaiker Office Complex.
   84 Greams Road, Thousand Lights
   Chennai-600006.

2. The Deputy Director Immigration,
   The Bureau of Immigration,
   Ministry of Home Affairs,
   Government of India,
   East Block – VIII, R.K.Puram, New Delhi-66

...Respondents in Crl.O.P.No.2346 of 2022

Prayer in both Crl.O.P's:- Criminal Original Petitions are filed under Section 482 of Code of Criminal Procedure, to direct the respondents to permit/allow the petitioner to travel abroad to the USA on the condition to return to India on or before 31st August 2022.

In Crl.O.P.No.880 of 2022:-

For Petitioner : Mr.V.Gopinath Senior Advocate for M/s.Vinithra Srinivasan

For R1 : Mr.K.Srinivasan, Special Public Prosecutor for CBI (R1)

For R2 : Mr.N.Ramesh Senior panel counsel

In Crl.O.P.No.2346 of 2022:-

For Petitioner : Mr.V.Gopinath Senior Advocate for M/s.Vinithra Srinivasan

For R1 and R2 : Mr.N.Ramesh Senior panel counsel

ORDER

These Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure 1973, seeking permission to travel abroad to USA by the petitioner.

2.Petitioner is shown as an accused in Ref.Crime No.9 of 2018 on the file of the Inspector of Police, Central Bureau of Investigation, Banking Security and Fraud Cell, Bangalore for offences under Sections 120-B r/w. 409, 420 IPC and under Sections 13(2) r/w. 13(1) (d) of Prevention of Corruption Act, 1988. Petitioner has never been arrested in this case nor has he applied for pre-arrest bail. He has been co-operating in the investigation of the first respondent. This petition is filed seeking permission to travel to USA for a period of six months to take care of his first daughter, who is due for delivery. Petitioner had earlier moved Crl.O.P.No.12877 of 2020 praying permission to travel to USA and return to India on 31st December 2020 to attend marriage of petitioner's daughter scheduled to take place on 04.11.2020. Due to Covid-19, the wedding was postponed to 25.04.2021. Thereafter, petitioner withdrew the petition on 30.09.2020, informing the said fact before the Court. Once again, petitioner approached this Court to attend the marriage. He filed Crl.O.P.No.619 of 2021 and this Court on 04.03.2021 permitted the petitioner to travel abroad with certain conditions. Since, petitioner's daughter's marriage was shifted to Chennai and conducted in Chennai itself, there was no requirement for the petitioner to travel to USA. Petitioner's son-in-law's father is terminally ill with cancer and his son-in-law has to take care of his father at Chennai. Petitioner is required to travel to USA, to take care of his elder daughter who is expecting a child. Petitioner sent a letter to first respondent on 18.12.2021 in this regard and there is no response till date. There was look out circular No.1842564 issued against the petitioner. Petitioner understands that look out circular expired with effect from 23.04.2021. Look out circular has not been re-extended and there exists no embargo for the petitioner to travel abroad. Petitioner now seeks permission to travel to USA for a period of six months and he is prepared to abide by conditions imposed by this Court.

3.Respondents opposed these petitions and the first respondent filed statement of objections, objecting to the petitioner's prayer seeking permission to travel to USA. The objections of the first respondent for the limited purpose of considering this petition, in brief, is as follows,

The case No.RC-09(E)/2018 registered by CBI, BS & FC, Bangalore, against M/s.Axcel Sunshine Limited (A-1) and 38 other accused, unknown public servants and other unknown persons under Sections 120-B r/w 409, 420 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention and Corruption Act 1988, based on the directions issued by Central Vigilance Commission, New Delhi. The allegations in brief, are that credit facilities of Euros 52 million was sanctioned and disbursed to M/s.WinWind Oyo during 2010-2011 and this account became NPA to the extent of Rs.393 crores in 2013. Senior Management of IDBI Bank Limited, in criminal conspiracy with private persons and in violation of extant guidelines, instructions and procedures of RBI extended a further loan of Rs.530 crores to one M/s.Axcel Sunshine Limited, another entity of the same group of companies during 2014 and adjusted the NPA and other overdue accounts of the group of companies, thus, causing a wrongful loss of more than Rs.600 crores to IDBI Bank. It is alleged that though the credit facilities advanced to M/s.WinWind Oyo became NPA, accused Senior Management officials of IDBI Bank Limited entered into a criminal conspiracy with the accused Promoter Directors of Siva Group of Companies, their official position in the capacity of public servants facilitated the latter to procure loan amounting to US $ 83 million from IDBI Bank in favour of M/s.Axcel Sunshine Limited, to use the same for repaying other loans of other associate companies of the group in flagrant violation of regulatory guidelines. Further modifications were made on 25.03.2014 by the officials of IDBI Bank to favour M/s.Axcel Sunshine Limited. Accused bank officials disbursed USD 67 million to Siva Industries and Holdings Limited (SIHL), Chennai through its associate companies. The Directors of Siva Industries and Holdings Limited utilized this fund to clear the dues of M/s.WinWind Oyo, M/s.Sterling Agro Products and Processing Private Limited, M/s.Planet Pickles Private Limited, M/s.WinWind Power Energy Private Limited, M/s.Dalmia Securites and M/s.Siva Industries. Further accused bank officials provided three disbursements aggregating the USD 4.70 million to M/s.Axcel Sunshine Limited to enable them to repay interests due to IDBI and thereby to conceal the enormous risk factors involved in using loan amount for clearing loan dues to other associate companies of Siva Group of companies and convey an impression that the loan account of M/s.Axcel Sunshine Limited was good. During September 2014 to December 2015, shares of M/s.Tata Teleservices Limited pledged by Siva Group of companies depreciated from Rs.106.00 per share to Rs.60 per share. This was known to accused Senior Management officials of IDBI Bank. M/s.Axcel Sunshine Limited failed to provide requisite collateral security of 7.82 acres of landed property worth Rs.38 crores of M/s.Sterling Agro Product Private Limited, additional security in lieu of the depreciation of value of M/s.TTSL shares to the extent of Rs.73.50 crores, end use/utilisation certified by Chartered Accountant for USD 67 million and outstanding liability of USD 73,250,454.18 to IDBI as on 31.12.2015. The accused has caused wrongful loss to the extent of US $ 73,250,454.18 (About INR 484.63 crores). Petitioner as a Chairman and Managing Director of IDBI Bank Limited from 05.07.2013 to 30.06.2015 met (A-13) C Sivasankaran on 14.02.2014 and had discussion with him in connection with M/s.WinWind Oyo and M/s.Axcel Sunshine Limited. Immediately after the discussion, in office note dated 22.02.2014 was put up by (A-31) Shri Biju George showing the bankruptcy details and options for NPA resolution of M/s.WinWind Oyo by advancing credit facilities of USD 83 milliion to M/s.Axcel Sunshine Limited. Petitioner was the Member and Chairman of the Credit Committee-I meeting held on 26.02.2014 which recommended the proposal to Executive Committee for sanction of secured overdraft facility/medium term loan of USD 83 million to M/s.Axcel Sunshine Limited. This sanction and further sanction for approval of modification in terms and conditions of sanction are in violation of RBI guidelines. Petitioner was also a Member of Executive Committee meeting held on 25.11.2014 and 19.06.2014 for the release of second and third disbursements for interest payments pending creation of collateral security in violation of RBI guidelines. There is an involvement of the petitioner accused in this case and his presence is required in India for the purpose of investigation. Lookout circular was issued against the petitioner vide No.LOC No.1842564 dated 26.04.2018 by Bureau of Immigration and it is renewed up to 23.04.2022 which will be further extended. His presence is essential till the completion of investigation.

4.Second respondent has not filed any written objections. However, learned counsel appearing for second respondent in Crl.O.P.No.880 of 2022 and both the respondents in Crl.O.P.No.2346 of 2022 opposed the petitioner's prayer and submitted that Directorate of Enforcement had registered a case in Special C.C.No.2 of 2021 referable to "ECIR/CEZO-I/10/2018" and this case is pending on the file of IX Additional Special Court for CBI cases, Chennai. This case is registered against the petitioner and 24 other accused under Sections 44 and 45 of Prevention of Money Laundering Act 2002, for commission of offence of money laundering as defined under Section 3, r/w. Section 70, punishable under Section 4 (PMLA) 2002. He further submitted that the presence of the petitioner is necessary for making progress in this case. If the petitioner is granted permission and he goes to USA, the progress in the case will be affected. That apart, he submitted that petitioner had approached this Court directly, without approaching the IX Additional Special Court for CBI Cases, Chennai, where Special C.C.No.2 of 2021 is pending and therefore, he prayed for dismissal of both the petitions.

5.In reply, learned counsel for petitioner submitted that petitioner is not arrested in Crime No.9 of 2018 registered by Central Bureau of Investigation and he is cooperating with the enquiry. In Special C.C.No.2 of 2021, he received summons and appeared before the Court. He filed a petition under Section 88 CRPC praying the Court to accept his appearance before the Court and the bond to be executed as directed, for further appearance before the Court. The IX Additional Special Court for CBI cases allowed this petition and granted bail to him on executing a bond for Rs.10,000/- with one surety for a like sum to the satisfaction of the Court. Accordingly, petitioner executed a security bond on 16.04.2021. He is cooperating with the investigation in Crime No.9 of 2018 registered by CBI and trial of the case in Special C.C.No.2 of 2021.

6.He further submitted that petitioner is citizen of India and he cannot permanently stay in USA. He owns two properties at (i) No.509, Horizon Residences, 16/1, Arunachalam Road, Saligramam, Chennai 600093, worth about Rs.150 lakhs and ii) No.303, Celestial Greens, Gopalan Constructions, Old Madras Road, Bangalore worth about Rs.70 lakhs. He is a Government pensioner. There is no possibility of him staying in USA permanently or leaving to another country to avoid investigation/trial. He requires permission only for six months to be with his first daughter, who is in family way and expecting a child in May 2022.

7.Considered rival submissions and perused the records.

8.From the records produced, it is evident that petitioner is one of the accused in Crime No.9 of 2018 and in Special C.C.No.2 of 2021. In Crime No.9 of 2018, the investigation is still pending. Admittedly, petitioner is not arrested in Crime No.9 of 2018 registered by CBI till date. In Special C.C.No.2 of 2021, he entered appearance on receiving summons and was granted bail by the Trial Court. Petitioner has produced copies of immigration details of his son-in-law Jaganathan to show that he landed in India on 28.01.2022 to take care of his father, who is said to be sufferring from cancer. He also produced xerox copies of his daughter's pregnancy details. The pregnancy details of his daughter Preethi Raghavan show that when she visited the Doctor on 26.10.2021, she was pregnant with the duration of nine weeks two days. The due date for the delivery of the baby is predicted as 29.05.2022. It is submitted by the counsel appearing for petitioner that petitioner's daughter Preethi Raghavan had complications during earlier pregnancy and therefore the presence of petitioner and his wife is absolutely necessary to give moral strength and comfort to his daughter at the time of delivery of the baby.

9.From the typed set of papers filed and the averments made in the petition, it is made clear that petitioner earlier moved Crl.O.P.No.12877 of 2020 praying permission to travel to USA to take part in his daughter's marriage scheduled on 04.11.2020. Due to Covid-19 situation, the wedding had to be postponed and petitioner withdrew this petition. Again petitioner filed Crl.O.P.No.619 of 2021 for the same relief and this Court by its order dated 04.03.2021 permitted the petitioner to travel to USA to attend his daughter's marriage with certain conditions. However, petitioner did not avail this permission for the reason that the marriage was shifted to Chennai. Order dated 04.03.2021 in Crl.O.P.No.619 of 2021 is produced for the perusal of this Court.

10.The learned counsel for the respondents submitted that when the order in Crl.O.P.No.619 of 2021 was passed, pendency of Special C.C.No.2 of 2021 was not brought to the notice of the Court. Had it been brought it to the notice of the Court, the petitioner would not have been granted permission to travel to USA in Crl.O.P.No.619 of 2021.

11.From the consideration of materials produced and submissions of the counsel appearing for the parties, it is evident that petitioner is one of the accused in both the cases, where a huge amount was advanced without taking appropriate precautionary measures, securities etc. The specific allegations against the petitioner is that as the Member cum Chairman of the Credit Committee-I, it recommended proposal to the executive committee for the sanction of over draft facility and as a

Member of executive committee he along with other members recommended for the release of second and third disbursements of interest payments, in violation of RBI guidelines. No doubt, the charge is serious in nature. However, the petitioner held the post of Chairman and Managing Director of IDBI Bank. He is a permanent resident of India and Government pensioner. The request to travel to USA to be with his daughter Preethi Raghavan at the time of her delivery is genuine request and this Court is of the considered view that his request may be considered on sympathetic and humanitarian ground, taking note of the fact that petitioner was already granted permission to travel to USA to attend his second daughter's marriage in Crl.O.P.No.619 of 2021.

12.Though it is not concerned in a criminal case, it is pertinent to refer to the judgment of the Hon'ble Supreme Court in Satish Chandra Verma Vs. Union of India and others reported in 2019 SCC Online SC 2048, wherein, it is observed that,

> 5.The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right (See: Mrs.Maneka Gandhi Vs. Union of India (1978) 1 SCC 248. In the said judgment, there is a reference to the words of Justice Douglas in Kent V. Dulles 357 US 116 (1958) which are as follows:
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> “Freedom to go abroad has much social value and represents the basic human right of great significance.”

13.For the reasons stated above, both the petitions in Crl.O.P.No.880 of 2022 and Crl.O.P.No.2346 of 2022 are allowed giving permission to the petitioner to travel to USA and stay in USA with his daughter Preethi Raghavan from 01.05.2022 to 31.08.2022 on the following conditions. The look out circular No.1842564 is ordered to be kept in abeyance from 01.05.2022 to 31.08.2022.

a)The petitioner is directed to deposit the original title deeds of Documents Nos.3635 & 3636 of 2015 dated 29.05.2015 relating to the property at No.509, Horizon Residences, 16/1, Arunachalam Road, Saligramam, Chennai 600093 and Document No.23612 dated 01.12.2004 registered at S.R.O., K.R.Puram, Bangalore (urban) relating to the property at No.303, Celestial Greens, Gopalan Constructions, Old Madras Road, Bangalore to the credit of Crime No.RC 09(E)/2018.

b) The petitioner shall execute a bond in duplicate for a sum of Rs.50,000/-(Rupees Fifty Thousand Only) with two sureties, each for a like sum to satisfaction of the learned XI Additional City Civil and Session Judge & Special Judge for CBI Cases, Chennai. Duplicate bond shall be kept in Special C.C.No.2 of 2021 pending on the file of IX Additional Special Court for CBI cases, Chennai.

c) The petitioner shall furnish the address of his daughters in USA and his contact details at USA viz., telephone/mobile numbers, e-mail address etc. to the respondents.

d) The petitioner shall return to India on or before 31.08.2022.

e) Petitioner shall give special vakalath to his Advocate to participate in the proceedings in Special C.C.No.2 of 2021 pending on the file of IX Additional Special Court for CBI cases, Chennai, including trial of case, without making any technical objection with regard to his identity or other aspects. He should ensure that counsel appearing for him should participate in the trial without getting any adjournment.

14. In fine, Crl.O.P.Nos.880 & 2346 of 2022 are allowed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

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To
1. The Inspector of Police,
   Central Bureau of Investigation,
   Banking Security and Fraud Cell,
   Bangalore.
   (Ref.Crime No.9 of 2018)

2. The Secretary,
   Ministry of Home Affairs,
   Government of India,
   South Block, New Delhi 110001
   (Ref.LOC No.1842564)

3. The Deputy Director,
The Directorate of Enforcement,
Chennai Zone-I,
Government of India,
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, C Block, MurugesaNaiker Office Complex.
84 Greams Road, Thousand Lights
Chennai-600006.

4. The Deputy Director Immigration,
The Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
East Block – VIII, R.K.Puram, New Delhi-66.

5. The IX Additional Special Court for CBI cases,
City Civil Court, Chennai.

+2ccs to M/s.NVS and Associate,Advocate,Sr.No.10529
+2ccs to M/s.Vinithra Srinivasan, Advocate, Sr.No.10528

CRL.O.P.Nos.880 & 2346 of 2022

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NSK 18/02/2022