IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.03.2022

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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4319 of 2022

Kishor Kharat ...Petitioner/Accused-39

Vs.

Superintendent of Police
CBI: BS & FC, Bangalore
(Crime No.09 of 2018) ...Respondent/Complainant

This Criminal Original Petition was filed under Section 482 Cr.P.C. to direct the respondent to permit the petitioner to travel to USA by keeping the look-out circular issued against him bearing reference number (not known) in Crime No.9 of 2018 in abeyance for a period of six months from such date as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : M/s.Sunder Mohan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI cases

ORDER

This Criminal Original Petition is filed seeking direction to the respondent to permit the petitioner to travel to USA keeping the look-out circular issued against him in Crime No.9 of 2018 in abeyance for a period of six months from such date as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. It is submitted by the learned counsel for the petitioner that the petitioner was a banker for 41 years and held various positions including the post of Managing Director and CEO of IDBI Bank as well as Indian Bank, besides serving in foreign banks in abroad. FIR in Crime No.9 of 2018 on the file of CBI/BS & FC, Bangalore for the alleged offences under Section 120-B read with 409 and 420 IPC was registered by the respondent alleging violation of banking guidelines in the sanction of loan

to a company in 2010. Petitioner is arrayed as 39th accused. The allegations in First Information Report are that IDBI bank granted loan to M/s.Win Wind Oyo (WWO) to the tune of Rs.393,00,00,000/- (Rupees Three hundred and ninety three crores only) on 04.11.2010 and this company had gone into bankruptcy. Being aware of the fact that the said company become NPA, officials of IDBI bank entered into criminal conspiracy with the Directors of Siva Group of Companies, holding company of WWO and granted loan to the tune of Rs.523,00,00,000/- (Rupees Five hundred and twenty three crores only) on 01.07.2013 to M/s.Axcel Sunshine Limited, an associate of Siva Group of Companies. Funds were illegally transferred to various companies of Siva Group to settle the dues of those companies. Investigation report of CBI and the report of IDBI bank neither reveals petitioner's name nor his involvement in the alleged offence. Petitioner's son is undergoing treatment for severe 'Ulcerative Colitis'. He has been suffering from rectal bleeding and severe diarrhea for more than three months and bedridden. There is threat of relapse and getting aggravated to malignancy, which could be life threatening. Petitioner's son needs help in this hour with his personal care and therefore, petitioner requests permission to travel to USA for a period of six months by keeping the look-out notice in abeyance.

3. Respondent objected this petition stating that the allegation, as per the FIR, is that Credit facilities of Euros 52 million was sanctioned and disbursed to M/s.Win Wind Oyo during 2010-11 and the said account became NPA to the extent of Rs.393 Crores in 2013. The senior management of IDBI bank Ltd., 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 (US$ 83 million) 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 companies, thereby causing a wrongful loss of more than Rs.600Crores to IDBI Bank. It is further alleged that M/s.Win Wind Oyo was sanctioned EUR 52 million by Infrastructure Corporate Group, IDBI bank, Chennai. The credit facilities advanced to M/s.Win Wind Oyo became NPA. Accused senior management officials of IDBI bank entered into criminal conspiracy with the accused Promoter Directors of Siva Group of Companies, by abusing their official position in the capacity of public servants facilitated the latter to procure the loan amounting to US$ 83 million from IDBI bank in favour of M/s.Axcel Sunshine Limited to use the same to repay other loans of other associate companies. This was done in flagrant violation of regulatory guidelines of RBI dated 01.07.2013. Further modifications were made on 25.03.2014 to favour M/s.Axcel Sunshine Limited. As per these modifications, (a) change in interest rate, (b) classification of facility as

Medium Term Loan (MTL), (c) change of Corporate Guarantee stipulation to “Letter of Comfort” from Siva Industries and Holdings Ltd (SIHL), and (d) Collateral Securities proposed to cover exposure to M/s.Axcel Sunshine Limited to be modified and provided as additional security against IDBI's exposure to any of the Siva Group of Companies. In furtherance of criminal conspiracy, accused bank officials disbursed US$ 67million to Siva Industries and Holdings limited (SIHL), Chennai. That was utilised to clear other dues. Further disbursement aggregating US$ 4.70 million was made to M/s.Axcel Sunshine Limited to enable them to repay the interest due to IDBI in order to conceal the enormous risk factors involved in using the loan amount to clear dues to other associate companies of Siva Groups. Thus, accused person had caused wrongful loss to the tune of US$ 73,250,454.18 as on 31.12.2015 to IDBI bank and corresponding wrongful gain to themselves. Petitioner was 39th accused and was member of Executive Committee Meeting held on 28.12.2015 for releasing 4th disbursement of US$ 1.60 million to M/s.Axcel Sunshine Limited towards recovery of interest due from the company, pending creation of collateral security.

4. Considered the rival submissions and perused the records.

5. It is seen from the averments made in the petition, statement of objections and submissions of the learned counsel appearing for the parties that the petitioner is one of the accused, more specifically 39th accused, in a case where it is alleged that the accused in the case had caused wrongful loss to the tune of US$ 73,250,454.18 as on 31.12.2015. Petitioner, it is alleged, as a member of Executive Committee in a meeting held on 28.12.2015 was a party to the decision made to sanction 4th disbursement of US$ 1.60 million to M/s.Axcel Sunshine Limited without creating collateral security. Though there is an allegation made against the petitioner that as a member of the committee, he was also responsible for the decision taken to release US$ 1.60 million to M/s.Axcel Sunshine Limited without creating collateral security, it is evident from the statement of objections that investigation carried out so far has not disclosed petitioner's role in the offence alleged against him. However, as a word of caution, it is also submitted that investigation in this case is still pending. As of now, it appears that there is no concrete material collected against the petitioner. Taking these aspects into consideration and also the submissions of learned counsel for the petitioner that petitioner's son is not well and suffering from the disease indicated above, which is supported by medical records, this Court is of the considered view that the petitioner may be given permission to travel to USA to be with his son to help him in recuperation.

6. 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:
>
> "Freedom to go abroad has much social value and represents the basic human right of great significance."

7. For the reasons stated above, this petition is allowed giving permission to the petitioner to travel to USA and stay in USA with his son Rohit Kharat from 21.03.2022 till 20.07.2022. The look-out circular opened against the petitioner by LOC No.1940713 is ordered to be kept in abeyance during this period. It is submitted by the learned counsel for the petitioner that petitioner's property documents were already seized by the respondent and are in the custody of respondent. Thus, this Court allows the petitioner to travel to USA with the following conditions:-

a) 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.

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

c) The petitioner shall return to India on or before 20.07.2022.

8. In fine, this Criminal Original Petition is allowed with above conditions.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Superintendent of Police
CBI: BS & FC, Bangalore
(Crime No.09 of 2018)

2.The Public Prosecutor,
Madras High Court,
Chennai.

3.The Presiding Officer,
XI Additional City Civil and Session Judge
& Special Judge for CBI Cases,
Chennai.

+1cc to Mr.Sunder Mohan, Advocate SR. No.15798

Crl.O.P.No.4319 of 2022

JPL (CO)
PR (11/03/2022)