

26-07-2023
Subha
Item no. 344
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

CRR 2328 of 2023
with
CRAN 1 of 2023

Enforcement Directorate, CGO Complex, Kol-64.

-versus-

Nilesh Parekh @ Nüllesh Parekh

Mr. Dhiraj Kumar Trivedi, Id. DSGI
Mr. Samrat Goswami
.....for the Enforcement Directorate.

Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharjee
Ms. Sutapa Sanyal
Mr. Satadru Lahiri
Mr. A. Agarwalla
Mr. B. N. Joshi
Ms. P Garain

....for the opposite party.

The present revisional application was preferred against the order dated 17.06.2023 passed by the learned Judge-in-Charge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta in M. L. Case No. 03 of 2019 arising out of ECIR No.12/KLZO/2016 dated 04.10.2016.

By the said order, the Special Judge permitted the petitioner to go abroad to meet his wife who is a cancer patient.

Mr. Dhiraj Trivedi, learned DSGI appearing for the Enforcement Directorate submitted before this court that on the basis of a complaint of State Bank of India on behalf of consortium of 25 banks made with the CBI, BS & FC, Kolkata informing that M/s. Shree Ganesh Jewellery House (I) Ltd had defrauded the

consortium of banks to the tune of Rs.2672 crores by way of mis-utilization of cash credit facilities obtained as working capital and fraudulently discounting of export bill, CBI registered a FIR bearing no. RCBSK2016E005 dated 12.07.2016 under Section 120B read with Sections 420/468/471 of IPC and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 against M/s. Shree Ganesh Jewellery House (I) Ltd and its promoters/directors/employees, unknown official of nationalized banks and others.

The Director of Enforcement Directorate initiated investigation under the provisions of P.M.L.A Act in the said matter. The Enforcement Directorate investigation reveals that M/s. Shree Ganesh Jewellery House (I) Ltd floated a number of companies in different countries such as UAE, Singapore etc and they have also obtained benefit of exemption of import duty in their factory located at Manikanchan SEZ. The jewellery items were sold in overseas market in both the countries and the sale proceeds appear to have been collected by the said companies outside India.

M/s. Shree Ganesh Jewellery House (I) Ltd. had discounted the said export bills with the consortium banks. However, the banks could not realize the sale proceeds of jewellery items and as a result the loan amount of M/s. Shree Ganesh Jewellery House(I) Ltd., held with all the banks became NPA.

In course of hearing of the revisional application, it transpired that except the present accused/opposite party, the other directors who are relations of the accused could not be traced by either the CBI or the Enforcement Directorate even after exerting

best of their efforts as they are staying in different countries. Record of the revisional application reflects that at least three cases are pending against the present accused which are as follows:-

1. *M. L. Case No. 3 of 2019.*
2. *RCBSK2016E005 dated 12.07.2016 which is being investigated by the CBI.*
3. *Another Case being M 72 of 2018 which is pending before the learned Chief Metropolitan Magistrate, Calcutta initiated at the instance of Directorate of Revenue Intelligence.*

I have considered the circumstances created by the opposite party between the cup and the lip for the purpose of travelling outside India or leaving India. After going through the order of bail passed in RCBSK2016E005 dated 12.07.2016, I find that by the order dated 11.07.2017, the petitioner was granted bail in RCBSK2016E005 (RC No. 05 of 2016) wherein there were no condition for depositing the passport. However, the opposite party on 08.06.2023 made an application before the said court being the learned Additional Sessions Judge-II, Bichar Bhawan, Calcutta and paragraph 2 of the application for relaxation is set out as follows:-

“2. That your petitioner arraigned as accused in this case and chargesheet has been filed against your petitioner and petitioner has been released on bail after considering period in custody with a condition not to leave the country without prior permission of this Learned Court. The order dated on 11.07.2017, copies of bail order are annexed hereto and marked as ANNEXURE “A”. The case is under Section 420, 468, 471 of the Indian Penal Code and sections 13(1)(d) and 13(2) of Prevention of Corruption Act.”

On perusal of the order dated 11.07.2017, I do not find that such condition was imposed while granting bail. However, the learned Judge (CBI) Court no. 2 granted permission to travel to Dubai for the purposes of the condition which has been stated to be there in the application. There is a recording over there that the Public Prosecutor appearing for the CBI did not object and subsequently an affidavit was filed before this court by the CBI wherein the CBI, Public Prosecutor has affirmed that he raised specific objection but it was recorded 'No Objection'. There were subsequent comment made by the learned court, however, for the purposes of deciding the present application, the same need be gone into. The said order passed by the CBI was presented and relied by the accused before the learned Chief Metropolitan Magistrate Court in M Case No. 72 of 2018 on 22.06.2023 and it was impressed upon the court that since the learned CBI court has permitted the accused to visit Dubai on the same ground the present accused/opposite party may be allowed to travel abroad and his passport may be released.

Accordingly, the learned C.M.M., Calcutta also granted permission to go abroad on certain conditions.

On an analysis of each of the applications and the orders so passed, I am unable to satisfy myself in which case except the DRI case the passport was deposited as it is reflected the passport was deposited before the learned Chief Metropolitan Magistrate, Calcutta. The order of the CBI Court was used even for revoking the passport which was impounded by the authorities. At least from the

records of this revisional application it reflects that this application (relaxation) which was taken out before the CBI court was not at all required since there was no condition of bail for the opposite party to seek permission to go abroad or any condition of the passport being deposited with the court at least with respect to the order-sheets which has been enclosed in the present revisional application. The order obtained from the CBI Court was used for the purposes of obtaining the order dated 22.06.2023 from the learned Chief Metropolitan Magistrate, Calcutta as also from the passport authorities.

It would not be out of place to state that so far as the other accused persons in this case are concerned, red corner notices/look out circulars have been issued by the CBI. The rest of the family members who are staying abroad have been successful in taking out the money from India and is carrying on their business as the DRI case reflects that the amount involved is Rs.7800 crores. The present opposite party was intercepted at Mumbai airport when he tried to enter India on the basis of a look out notice which was existing on the said date in the year 2017. So far as the order passed by the special court in M. L. Case No. 03 of 2019 while granting bail to the accused/opposite party, there was a direction to deposit the passport. However, the plea taken by the Enforcement Directorate is that the accused gave a statement that the passport was lying with the DRI authorities and as such the Enforcement Directorate did not pursue for retaining the passport.

The subject matter of investigation reflects that the

accused/opposite party along with his relations have been able to establish companies namely, Abhushan (S) Pte Ltd., Singapore, Excellency Pte Ltd., Singapore, Sparkling Stars Trading Pte. Ltd., Singapore, Wonder Cut Pte Ltd., Singapore, Sparkle Jewellery FZE, Singapore, M/s. Ibrahim Al-Sayegh Jewellery FZE, Sharjah, UAE, Ornate Designs LLC, Dubai, UAE, Sky Gems FZE, Ajman Free Zone, UAE, Sparkle Jewellery Fze, Sharjah, UAE and other companies.

Earlier it was directed by this Court to the Enforcement Directorate to check through the Indian Embassy regarding the health condition and the particular hospital where the wife of the present opposite party is being treated. The said report obviously is awaiting and in the meantime, the opposite party preferred Special Leave to Appeal being CrI. Nos. 8390-8391/2023 wherein it was directed that the vacating application should be considered by this Court on 26.07.2023.

I have considered the submissions of either parties and on an assessment of the materials placed before this Court, I am of the view that the opposite party was initially arrested while entering India. The opposite party has already submitted that he has no relations who would furnish bond on his behalf and is available in India. The rest of the family members who are beneficiaries from the money which was taken out from the nationalised banks could not be brought back to India of for facing trial by the Central Bureau of Investigation as well as the Enforcement Directorate in spite of best of their efforts. Further the opposite party has used

means and methods for obtaining an order which was used before other judicial forum or administrative authorities very slyly which do not inspire confidence of this Court to allow the accused/opposite party to travel abroad and leave this country. Consequently, I am unable to agree with the order dated 17.06.2023 passed by the learned Judge-in-Charge, Special (CBI) Court No.1, Bichar Bhawan, Calcutta in ML Case No. 03 of 2019 arising out of ECIR No.12/KLZO/2016 dated 04.10.2016, the said order is hereby set aside.

Accordingly, the revisional application being CRR 2328 of 2023 is allowed.

In view of the aforesaid reasons being granted, the vacating application, being CRAN 1 of 2023, filed by the opposite party is hereby dismissed.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

