

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4905 OF 2022

Philip Anandaraj S/o.

Late T. Joseph Anandaraj

... Petitioner

V/s.

Union of India & Ors.

... Respondent

Mr. Atul Kumar with Ms. Vinita Vashist and Mr. Amit Gupta i/by Ms. Surekha Kharwar for the petitioner.

Mr. Shriram Shirsat for respondent no.2/UoI.

Mr. A.R. Patil, APP for respondent no.3/State.

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CORAM : AMIT BORKAR, J.

DATED : APRIL 24, 2023

P.C.:

1. The writ petition is directed against legality and validity of order dated 1 March 2022 passed by the learned Special Judge under PML Act, Mumbai rejecting challenge to the Look Out Circular issued against the petitioner.

2. According to the respondent no.2, the petitioner is a witness in relation to offences registered against one Hassan Ali Khan and Kashinath Tapuriah. According to the prosecution, the accused introduced himself being owner of business house in Dubai and showed his intention to invest in hotel properties in Switzerland. According to the prosecution, the accused offered the petitioner to

look after properties purchased by him. The petitioner arranged meeting of Hassan Ali Khan with the owner of the property and in a joint meeting held in July 2001 at the UBS Head Office, it was decided that the accused no.1/Hassan Ali Khan will pay token amount and sign the contract for the said deal.

3. According to the prosecution, under the inducement by the accused to extend financial help of USD 5,00,000/- he became victim at the hands of accused.

4. The Department of Income Tax raided flats of Hassan Ali Khan on 5 January 2007. Since then, according to the petitioner, he is staying in the same house which has been confiscated by IT officials. He applied for return of passport which was released by order of this Court dated 23 March 2009.

5. The respondents on 27 October 2010 issued Look Out Circular against the Indian citizens and foreigners. In 2011, Case No.1 of 2011 was filed in the Special Court, PMLA, Mumbai. On 13 April 2016 while traveling to Hongkong, the petitioner was detained by the Immigration Authorities under the instructions of respondent no.2 and confiscated passport of the petitioner. Respondent no.2 filed supplementary charge-sheet in July 2018.

6. According to the petitioner, having attained the age of pension, he needs to travel to Switzerland for getting Swiss Social Security Returns, pension.

7. On 8 November 2021 the petitioner applied for cancellation of Look Out Circular which has been rejected by the impugned order. Aggrieved thereby, the petitioner has filed present writ

petition.

8. The respondent no.2 has filed reply giving details of prosecution initiated against Hassan Ali Khan and Kashinath Tapuriah. It is not in dispute that both these persons have died during pendency of the complaint. However, according to the prosecution joint trial of another offence registered against the accused persons and other accused is pending before the Special Court. The writ petition is opposed on the ground that presence of the petitioner is required for giving evidence in the trial. The petitioner is a witness to the material event relating to prosecution for offence alleged against the accused in other trial. The writ petition is also opposed on the ground that there are high chances that the petitioner may evade due process of law by flying away from the country.

9. Heard learned advocates for the petitioner and respondent no.2. Learned advocate for the petitioner inviting my attention to the judgment of this Court in **Om Prakash Bhatt v. State of Maharashtra & Ors.** Reported in AIR Online 2021 Bom 729 submitted that the petitioner is not an accused but only a witness. Therefore, the petitioner is entitled to travel abroad for his personal obligations.

10. He relied on Office Memorandum dated 27 October 2010, and in particular clause (h) of the said Circular, which reads thus:

“(h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed

about the arrival/departure of the subject in such cases.”

11. On perusal of clause (h) of the Office Memorandum, it appears that the said Circular takes away right of the investigating agency to prevent a person from leaving the country in cases where no cognizable offence under IPC or other penal laws have been registered.

12. The apprehension expressed by the respondent no.2 that the evidence of the petitioner is necessary in trial and once he is permitted to travel abroad, there are no chances of he returning back. In the absence of any material to justify the said apprehension, in the facts of the case, the petitioner cannot be restrained from traveling abroad as he is not an accused of any offence either under IPC or special law. There cannot be dispute that the petitioner being witness needs to cooperate with the respondent no.2; however, his right to travel abroad cannot be taken away. It is not the case where permission to travel abroad granted to the petitioner would be detrimental to the sovereignty, security or integrity of India or bi-relations with any country or strategic economic interest of India.

13. In that view of the matter, following order is passed:

a) The petitioner shall be entitled to travel, subject to following conditions:

i) The petitioner shall inform respondent no.2 about the travel details including dates of departure and arrival of the petitioner, in and out of India;

ii) The petitioner shall inform respondent no.2 about the

address at the destination abroad during visits and his contact numbers at such places;

iii) The respondent no.2 shall furnish details of contact numbers including cell phone numbers, email address and other details of its officials to whom the petitioner shall provide the details as mentioned in above clauses within two weeks from today;

iv) The petitioner shall cooperate with respondent no.2 for giving evidence in the trial and in case respondent no.2 calls upon him to attend the office;

14. The writ petition is allowed in above terms. No costs.

(AMIT BORKAR, J.)