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Crl.MP.Nos.3058 and 3063 of 2023
in Crl.OP.Nos.108 and 111 of 2015

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A.D.JAGADISH CHANDIRA, J.

Both the criminal miscellaneous petitions are filed to relax the condition imposed on the petitioner by this Court in Crl.OP.Nos.108 and 111 of 2015 dated 12.01.2015 with a direction to surrender his passport before the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court, Chennai) and now seeking to return the passport bearing No.M3101109 so as to enable the petitioner to apply Visa and to travel abroad to visit his son and family members.

2. The learned counsel for the petitioner would submit that the petitioner is arrayed as A28 in both the cases in Cr.Nos.RC MA1 2013A 0028 and RC MA1 2013A 0029 registered by the respondent for the offence under Sections 120B r/w.420 IPC and Sections 13(2) r/w.13(1)(d) of PC Act 1988. He would submit that the petitioner was arrested and applied for bail before this Court in Crl.OP.Nos.108 and 111 of 2015 and this Court by an order dated 12.01.2015, while granting bail to the petitioner had imposed



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condition that the petitioner shall surrender his passport and in due compliance of the same, the petitioner surrendered the passport bearing No.M3101109 dated 30.10.2014 issued by the Regional Passport Officer, Cochin and the petitioner had continued to comply with the conditions and the case is still pending.

3. The learned counsel would submit that the respondent, after completing the investigation had filed the final report before the Special Court, on 01.09.2017, the trial Court returned the final report on 08.02.2018 and directed the respondent to produce the sanction order along with the final report before the Special Court. The said order was came to be challenged by the respondent in Crl.OP.Nos.23530, 23531, 23532 and 23533 of 2018 and this Court by common order had directed the Special Court to consider the final report regarding requirement of sanction afresh taking into consideration the judgment of the Hon'ble Apex Court in the case of *L.Narayana Swamy v. State of Karnataka*. However, the said order was challenged before the Hon'ble Supreme Court by way of SLP (crl.)3232 of 2019 and the Hon'ble Apex Court had stayed all the order impugned and the SLP is still pending. In view of the pendency of the SLP, there is no progress



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before the Special Court.

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4. He would further submit that the petitioner though issued with the passport has not travelled anywhere during the pendency of the case and he would submit that the petitioner's son and his family are permanently living in Germany and the elder daughter of the petitioner is living in USA. Both the children have been repeatedly requesting the petitioner and his wife to visit and spend sometime with them. However, due to the passport being held by the Special Court and in view of the condition imposed by this Court, the petitioner is unable to travel anywhere. In the meanwhile, the passport is also likely to expire on 29.10.2024.

5. The learned counsel would further submit that the petitioner had intended to travel to Germany and USA, thereby the present application has been filed seeking to modify the condition and to return the passport so as to enable the petitioner to travel abroad. He would submit that the petitioner has strong roots in Kerala and he is also ready to furnish additional security and also ready to give an undertaking that after returning from his travel, he will appear before the Special Court and surrender the passport.



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6. The respondent has filed counter, the relevant portion is reproduced hereunder :-

"10(iv) It is submitted that the petitioner/A28 and his company namely M/s.The Trading Corporation Pvt Ltd have also been arraigned as accused in the connected cases RC.MA1 2013 A 0029 and RC.MAL 2013 A 0030 CBI, ACB, Chennai in which he was arrested on 15.12.2014 and released on bail on the order of the Hon'ble High Court of Madras vide its order dated 12.01.2015.

10(v) It is submitted that there is a possibility to pass appropriate orders by the Hon'ble Supreme Court of India in the SLP filed by the Director General (Vig) and CVO of Customs & Central Excise, New Delhi and accordingly, the charge sheet of the above said cases will be resubmitted before the Hon'ble Trial Court, in which the Petitioner/A-28 and his company namely The Trading Corporation Pvt. Ltd., have been arraigned as accused. Hence, the presence of the Petitioner/Shri George K Mathew is very much essential to face the trial of these cases.

11. In view of the above, it is submitted that the petitioner/A-28 and his company namely the Trading Corporation Pvt.Ltd., are the accused in the above said criminal cases, which are pending before the Hon'ble Principal Special Judge for CBI Cases, Chennai and he had played a vital role in



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the commission of the crime. Hence if the petitioner/A-28 is granted to relax the condition and also to return of his passport and in turn, permitted to go abroad, he would flee from the clutches of law and may not return back to India and he would permanently settle at foreign country and he would not be available to face the criminal cases, which are pending against him and subvert the criminal proceeding of these cases. Hence, the petition filed by the petitioner/A-28 to relax the condition and return his passport No.M3101109 is liable to be dismissed by this Hon'ble Court."

7. The learned Special Public Prosecutor appearing for the respondent would submit that the petitioner's family members are living in abroad there is a possibility that the petitioner may not come back for trial. However, he would submit that pursuant to the stay order passed by the Hon'ble Apex Court, there is no progress in trial.

8. The learned counsel for the petitioner would submit that the main accused in this case had earlier filed an application seeking for modification of condition with regard to return of passport and this Court in Crl.MP.No. 2 of 2015 in Crl.OP.No.33604 of 2014 had directed the trial Court to return



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the passport had permitted him to travel abroad.

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9. Taking into consideration, the facts and circumstances and also considering the fact that the petitioner is a permanent resident of Kerala, this Court is inclined to relax the conditions made in Crl.OP.Nos.108 and 111 of 2015 dated 12.01.2015 :-

(i) the trial Court is directed to return the passport of the petitioner and permit him to travel abroad between 01.05.2023 to 10.01.2024.

(ii) the petitioner shall furnish the address and details of stay in Germany and USA, E-mail IDs and contact telephone numbers. Further in the event of the trial Court insisting for the petitioner's appearance before completion of the above said period i.e., 01.05.2023 to 10.01.2024, the petitioner shall appear before the trial Court without any delay.

(iii) the petitioner shall after completion of his journey to abroad appear before the Special Court within one week of reaching India or on 17.01.2024 whichever is earlier.

(iv) the petitioner shall be represented by a counsel before the trial Court.



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10. With the above directions, the criminal miscellaneous petitions are ordered and the conditions imposed by this Court in Crl.OP.Nos.108 and 111 of 2015 dated 12.01.2015 are modified.

17.03.2023

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A.D. JAGADISH CHANDIRA. J.,

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