2023: PHHC: 116110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-27444-2023
Reserved on: 31.08.2023
Pronounced on: 02.09.2023

Utkarshh Pahwa

. . . . Petitioner

Vs.

Assistant Director (PMLA)

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. R.S. Athwal, Advocate, for the petitioner.

Mr. Arvind Moudgil, Sr. counsel for the respondent-E.D.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash order dated 17.05.2023 (Annexure P1) passed by ld. Special Judge, PMLA Court, Chandigarh, whereby application moved by the petitioner for relaxation of the condition to take prior permission of the Court to travel abroad has been dismissed, during the pendency of the complaint case No.2 of 2018 in ECIR/06/CHD/2016 dated 18.07.2018 under Sections 44 & 45 of Prevention of Money Laundering Act, 2002, titled as 'Assistant Director (PMLA) Versus Ashu Mehra and others', pending in the Court of ld. Special Judge, PMLA Court, Chandigarh.

2. Petitioner is one of the accused in the criminal complaint in question pending before the ld. Special Judge, PMLA Court, Chandigarh, wherein allegations are with regard to proceeds of crime amounting to ₹299 crore generated by commission of the schedule offences by the

main accused including the maternal uncle of the petitioner namely, Gaurav Kirpal and out of which ₹40 lakh are alleged to have been utilized by the petitioner.

3. Petitioner was allowed anticipatory bail in the aforesaid complaint vide order dated 29.09.2018 and one of the conditions of the bail was that he shall not leave the country without prior permission of the Court.

4. According to the petitioner, due to his business and social commitments, he has to travel abroad frequently. Petitioner has given details of his travel history in para-No.15 of the petition and submits that every time he returned back in time, without violating any condition. He was granted permission to travel abroad by the trial Court on some occasions, but on some of the occasions, the said permission was declined due to which he had to approach this Court. Petitioner submits that the whole process of moving of the application seeking permission to travel abroad, then filing of the reply by the respondent-Directorate, fulfi-lling the conditions imposed by the Court etc, consumes considerable time, due to which several times, the whole purpose is defeated. Petitioner also submits that though the charges were framed in 2018, but not even a single witness has been produced by the Enforcement Directorate before the trial Court till date on the ground that investigation is still incomplete qua the other co-accused. Petitioner also submits that he is ready to produce the Fixed Deposit receipt or the bank guarantee to the tune of ₹40 lakh, which is alleged to have been utilized by him out of the proceeds of the crime, which may be retained by the Court till the

pendency of the matter, but in all these circumstances, the condition of bail to seek prior permission to travel abroad every time be dispensed with.

5. In detailed reply filed by the respondent-Enforcement Directorate, it has not been refuted that each time the petitioner was granted permission to travel abroad, he returned back within time, without violating any condition. Ld. counsel for the respondent-enforcement also submitted that he is not averse to the proposal of the petitioner to deposit the FDR or bank guarantee in the trial Court to the extent of ₹40 lakh i.e., amount which was allegedly utilized by the petitioner out of the proceeds of the crime.

6. Having considered the submissions of both the sides, this Court allows this petition and directs that the condition of *'seeking prior permission of the Court to travel abroad'* imposed in the order granting bail to the petitioner is substituted with the following modified conditions:

(i) Petitioner shall not leave the country without informing the trial Court a week in advance of his visiting abroad. He shall furnish the complete itinerary stating the country/countries, which he intends to visit and the period of his stay as also the addresses where he would be staying, besides his contract numbers. He shall also inform the trial Court in writing about his return to India within a week thereof.

(ii) Petitioner shall not travel abroad during the period when the case is listed for evidence and his presence is required, unless expressly dispensed with.

(iii) In case, presence of the petitioner has been exempted, then the trial will continue in the absence of the petitioner, though in the presence of his counsel and the evidence recorded in his absence though in the presence of his counsel, shall be binding upon him and he will not dispute his identity.

(iv) Apart from the above, petitioner shall furnish the bank guarantee or FDR of ₹40 lakh issued by any Nationalized Bank with renewing facility, which shall be kept alive till the pendency of the matter. The said FDR/Bank guarantee shall be retained by the trial Court, till the trial is over, so as to avoid furnishing of the bank guarantee/FDR each time the petitioner informs the Court about his visit to abroad.

7. With the aforesaid modifications in the order granting bail to the petitioner, present petition stands disposed of.

(DEEPAK GUPTA)
JUDGE

02.09.2023
Vivek

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*