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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RESERVED ON -17th AUGUST, 2023**
PRONOUNCED ON -21st SEPTEMBER, 2023

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CRL.M.C. 289/2023

MANDHIR SINGH TODD

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr.
Puneet Relan, Mr. Irfan Muzamil,
Advs. with petitioner in person.

Versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel
for ED with Mr. Vivek Gurnani, Mr.
Kartik Sabharwal and Ms. Manisha
Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J:

1. The present petition has been filed under Section 482 Cr. PC with the following prayers:

“a. set aside the impugned order dated 11.10.022 passed by Sh. Sushil Anuj Tyagi, Learned ASJ-04, Central District Court Tis



Hazari, whereby application filed by the petitioner bearing IA No.01 /2022 was erroneously and mechanically dismissed.

b. permit the petitioner to travel to London for a period of 4 weeks in order to receive medical treatment for his rare medical condition affecting the vision of his eyes;

c. Set aside/suspend the Look Out Circular, dated 05.08.2019, issued at the behest of the respondent for the period of travel of the Petitioner.”

2. The petitioner is aggrieved of the impugned order dated 11.10.2022 passed by the learned Trial Court whereby the application for setting aside the look-out circular (LOC) issued at the behest of the complainant department and seeking permission to travel abroad for receiving treatment for his rare medical condition affecting his vision was declined predominantly on the ground that the petitioner failed to set up any case to set aside the LOC. Learned Trial Court also took note of the fact that the petitioner tried to flee away from the country soon after the registration of the FIR and because of that reason LOC was requested to be opened by the E.D. so that the petitioner could be apprehended in case he tries to flee away.
3. In the impugned order, the learned Trial Court also took note of the fact that while considering the issue of bail in case FIR No. 172/2018 PS EOW, the Hon'ble Supreme Court in SLP (CRL) 11818/2019 vide order dated 18.12.2019 *inter alia* directed that the petitioner will not travel abroad without the leave of the learned Trial Court. Learned Special Judge *inter alia* held that the petitioner had not moved any application before the learned Trial Court dealing with the EOW case



for seeking permission to travel abroad. In respect of the medical urgency, the learned Trial Court was of the view that there is no record to show that the petitioner cannot receive the treatment safely in India.

4. Facts in brief, are that the petitioner is a British citizen of Indian origin and has been residing in India since 2008. The petitioner is a director in M/S Zenica Cars India Pvt. Ltd and M/S Zenica Performance Cars Pvt Ltd. The aforesaid companies are registered under the Companies Act, of 1956 and are the dealers of Audi and Porsche cars. The accused acting on behalf of the company approached the HDFC bank to seek various credit facilities and as per the banking procedures, the credit facilities were extended by the bank on the basis of various financial and other documents and information provided by the accused acting on behalf of the company and in order to secure the credit facilities a Deed of Hypothecation was executed between the Petitioner and the bank. The facilities sanctioned by the HDFC bank were renewed from time to time based on the documents submitted by the company. Subsequently, it was informed to the bank that the company had been suffering huge losses for the last 4 financial years and had been forging the documents to obtain credit facilities.
5. Thereafter, it has been alleged that during a comprehensive stock audit conducted by the bank, it was discovered that the various documents which were submitted by the Petitioner were forged and in order to obtain the same, Petitioner had misrepresented their outstanding balance with J & K Bank, leading to a huge difference between the due amount shown of Rs.11,64,48,702/- and the actual amount owed was



Rs. 49,51,50,702/-. In due course of the audit scheme, it was also found that the petitioner had fraudulently submitted a list of 97 demo cars as existing in the stock. However, it was found that only 42 cars were located during the stock audit. Out of the 97 demo cars provided by Zenica Cars, there were 32 demo cars which were funded by HDFC Bank Ltd. and the amount against the sale of these cars was outstanding.

6. Similarly, it was also found that the petitioner had fraudulently submitted a list of 200 new Audi Cars as available in the stock while only 29 cars were found physically available and thus it was alleged that the petitioner manipulated the stock of cars in order to show that there was sufficient stock of cars and concealed and diverted the sale proceeds of the cars, without repaying the loan of the banks. Balance proceeds have been utilised for meeting the inter-alia miscellaneous expenses of the companies. Furthermore, it was also found that there was a loan availed by the M/S Zenica Performance Cars Pvt. Ltd. for the purchase of 6 Porsche cars and the sanctioned amount was to be paid on an EMI basis whereby the company sold the cars despite being hypothecated with HDFC bank and the company diverted the sale proceeds without any repayment to the bank. As per the investigation, the petitioner had indulged in the offences under PMLA, 2002, acquiring the proceeds of crime amounting to 115 crores in the form of a loan from HDFC bank in favour of his company's operations.



7. Mr. Ramesh Gupta, learned senior counsel for the petitioner submits that the respondent registered the case against the petitioner, his father, and the other accused persons. However, the petitioner was not arrested during the course of the investigation by the respondent. On 19.02.2021 the respondent filed a complaint under sections 44 & 45 of PMLA, 2002 before the Learned Judge Tis Hazari and the Learned trial court took cognizance of the complaint and issued summons *inter-alia* against the petitioner to which he appeared before the Learned Judge and was subsequently granted regular bail vide order dated 13.01.2022 but with the condition that the accused shall not leave India without the prior permission of the court, which is at the stage of scrutiny of documents.
8. Mr. Ramesh Gupta, learned senior counsel for the petitioner submits that the accused moved an application before the Learned Trial Court to set aside LOC & suspension of sentence which was dismissed vide order dated 11.10.2022 as treatment can easily be done in India. It has been submitted by the learned senior counsel for the petitioner that the petitioner is aggrieved by the order dated 11.10.2022 whereby the bail application of the petitioner seeking permission to travel abroad to undergo medical treatment for his rare medical conditions affecting his vision was erroneously dismissed by the learned trial court on the ground that: -

a. the petitioner has played a major role in the present money laundering case and;



- b. has also attempted to flee away from the country on registration of the FIR dated 29.08.2018 without informing the investigation agency and did not approach the trial court for getting the LOC set aside;*
 - c. There was no document on record to suggest that such medical procedure and treatment cannot be done safely in India;*
 - d. The father of the petitioner has been made the surety who is also an accused in the present case and was suffering from covid at the time of granting of bail and was this not accepted as surety in the present matter;*
 - e. The petitioner also did not approach the court in order to obtain permission to travel abroad and for setting aside of LOC.*
9. It has been further submitted by Mr. Ramesh Gupta, learned senior counsel for the petitioner that there is an urgent need to travel abroad to undergo eye treatment under the supervision of Dr. Mark Wilkins, Consultant Ophthalmic Surgeon at London for “Keratoconus” (an eye ailment, which occurs in one in a million person) affecting the vision of his left eye, which if not treated at the early stage might result to loss in vision. Learned Senior Counsel further submitted that the petitioner has previously undergone eye surgery, twice, for his rare medical condition and now he has to undergo a DALK surgery (i.e., complete cornea transplant, which in itself is a very rare and unique medical procedure). Further, it has been submitted that the petitioner is suffering from “Keratoconus” and was also previously treated by Dr. Mark Wilkins, Consultant Ophthalmic Surgeon in London who is now associated with OCL Vision, for both eyes because of which the Petitioner has full faith and trust only in him and no one should be denied of the medical treatment by the doctor of his choice.



10. It has further been submitted by the learned senior counsel for the petitioner that the said treatment is not available in India and the respondent has misled the trial court and is now trying to mislead this court by placing reliance on the two letters dated 29.09.2022 which have been obtained by misinforming the Doctors at AIIMS & Medanta. Moreover, even on 12.08.2023, the petitioner consulted Dr. Sanjiv Mohan of Mohan Eye Institute where he was examined for more than one and a half hours in the presence of an I.O from the office of ED, who after examination opined that:

"-Referred to Dr.Mark Wilkins for further opinion and management in view of him treating Mr. Todd or last 11 years. "

11. Learned Senior Counsel for the petitioner states that the properties equivalent to the alleged laundered money of Rs 120 Crores have already been attached. The counter affidavit filed by the respondent with the details of the identified and equivalent properties of the petitioner has been mentioned which are worth more than the money allegedly cheated by the petitioner to be around Rs 150 Crores.
12. It has been further submitted that the petitioner was not arrested during the course of the investigation. The learned trial court has also held that there is no material on record shown by the respondent that the accused is tampering with the evidence or threatening the witnesses or shows any danger of absconding or fleeing and therefore, granted bail to the petitioner along with his father.
13. The Learned Senior Counsel further submitted that the mere fact that the petitioner is a British national who has been residing in India since 2008, should not be a prime consideration for this or any of the courts



to deprive him of his fundamental right to travel abroad and that too for medical treatment.

14. It has further been submitted by the Learned Senior Counsel for the petitioner that EOW of Delhi police registered an FIR pursuant to the LOC on 30.08.2018 and the petitioner was scheduled to travel to London on 31.08.2018, to attend the marriage ceremony of his cousin. The petitioner was illegally arrested by the official of EOW. It has been submitted that the learned trial court has taken a fallacious view that the petitioner was trying to flee from the investigation agency when he was not even aware of the FIR lodged against him, as he was not even served with any notice.
15. It has also been submitted by the Learned Senior Counsel for the petitioner that the petitioner has two daughters, the elder daughter aged 5 years is studying at the American Embassy School, Delhi and the younger daughter aged 3 years is studying at SIAS International (Singapore School), Delhi. The petitioner is willing to surrender the passports of his daughters. The passport of the father of the petitioner is already on record of the Learned Trial court.
16. It has further been submitted by the Learned Senior Counsel for the petitioner that there are infirmities in the impugned order as the court has taken an incorrect view that the petitioner has not obtained permission from the trial court of the EOW first as directed by the Hon'ble Supreme Court but has approached the special court (ED) seeking permission to travel abroad and for setting aside the LOC. It has been submitted that the court of Learned ASJ being the superior court and as advised to the petitioner, first approached the court of



learned ASJ. The LOC was issued at the behest of the Respondent therefore the appropriate court would have been the special court of Learned ASJ for suspension of LOC and permission to travel abroad.

17. It has been submitted that the trial court erroneously observed that the father of the petitioner cannot be a surety as he is an old person and was suffering from COVID-19 whereas, the father of the petitioner is aged 62 years and is a physically fit person. Therefore, the fallacious view taken by the Learned Trial Court must be rejected and the petitioner if this Hon'ble court permits can travel abroad for a period of 4 weeks for treatment of his rare eye condition.
18. Learned Senior Counsel for the petitioner submits that the petitioner has placed an affidavit duly signed by the petitioner's mother, Mrs. Balbinder Singh Todd; his grandmother Mrs. Mohinder Singh Todd that they are out of their own free will and are ready to submit/deposit their passports. Learned senior counsel submitted that the wife of the petitioner is willing to accompany the petitioner to London for his care, however, if this court deems fit, is also willing to deposit her passport. Further, the British passports of the two daughters of the petitioner will be also deposited.
19. Moreover, the petitioner is ready & willing to furnish two more sureties amounting to Rs. 5 Crores, if this Hon'ble Court permits him to travel, which can be released upon his return back to India. It has further been stated that the petitioner is permitted to go to London then he will be staying at his sister's house at 25 Woodside A venue, Beaconsfield, HP9 1 JJ; and he will be using telephone no. 00447799531525; he upon reaching London, will share his live location or Google pin with the



Investigating Officer.; lastly, he will appear through VC before the Learned Trial Court, if on the date of hearing, he is in London and no adjournment will be sought by his counsels due to his absence.

20. Mr. Zoheb Hossain, learned Special Counsel for the respondent opposing the contentions made by the learned senior counsel for the petitioner submitted that the present petitioner is an accused in a case of money laundering pertaining to a bank fraud wherein the Proceeds of Crime are Rs. 1,20,57,96,522/-. The prosecution filed a complaint on which Learned special court took cognizance vide order dated 17.03.2021 which is now pending trial and is at the stage of framing of charges. It has been submitted that the petitioner is required to be available in the country for trial and confiscation proceedings.
21. Mr. Zoheb Hossain learned Special Counsel has been submitted that if the petitioner is allowed to travel there is an apprehension that the petitioner being a British Citizen will flee away and it will take several years to get the accused extradited from a foreign country. It is submitted that the court while dealing with the foreign national's right to travel abroad under Article 21 has to also consider the right to a fair trial and public confidence in the country's judicial system and faith will be defrauded. Reliance has been placed upon the case of ***Talab Haji Hussain v. Madhukar Purshottam Mondkar, 1958 SCR 1226: AIR 1958 SC 376*** wherein it was *inter-alia* held that, a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view.



22. It has been further submitted that the petitioner was granted regular bail by Learned Special Court, PMLA on 13.01.2022 subject to the condition that he will not leave India without the permission of the Court. The petitioner thereafter filed an application seeking permission to travel abroad before the Learned Special Court, which has been rightly rejected by the Learned Special Court.
23. It has been further submitted by the Learned Special Counsel for the respondent that the petitioner is seeking permission to travel abroad to allegedly undergo 'laser retinopathy', a treatment which is widely available in India. Learned Special Court, PMLA, vide the Impugned Order, has rejected the travel application since the treatment sought is widely available in India. Further, an opinion was taken from Medanta Hospital as well as Dr. Rajender Prasad Centre for Ophthalmic Sciences, AIIMS, New Delhi wherein it has been stated that the treatment of laser retinopathy is widely available in many hospitals in India including AIIMS and Medanta hospital. Reliance has been placed upon the *recent* decision dated 24.05.2022 passed by this Hon'ble Court in the case of ***Directorate of Enforcement vs. Kanwar Deep Singh*** in CrI. M.C. 1748/2022 wherein this Court was pleased to allow the petition filed by ED against an order of the Learned Special Court allowing travel for medical treatment, on the ground that the said treatment was available in India. Further, the Hon'ble Supreme Court has also approved the said approach by way of its recent order dated 18.08.2023 wherein the SLP (CrI) Diary No. 24253/2023, which was filed against this Court's judgment dated 24.05.2023 in CrI. M.C.



6638/2022, has been dismissed as withdrawn after hearing arguments.

24. Learned counsel for the E.D, submitted that the petitioner tried to flee from the country on within the days of registration of the FIR against him without any prior information to the investigation agencies. It was only when the LOC was issued against the petitioner that he was apprehended at the airport when he was trying to flee. Such conduct of the petitioner is to delay the trial proceedings and cannot be overlooked.
25. Mr. Zoheb Hossain, learned Special Counsel has contended that the petitioner has several properties located abroad including Italy, and Britain and has sufficient means to sustain himself. Since India does not have any extradition with Italy there is a huge possibility of the accused fleeing way.
26. Mr. Zoheb Hossain, learned Special Counsel has submitted that the Petitioner is also an accused in 4 more FIRs registered by Economic Offence Wing, Delhi Police on the basis of complaints from Federal Bank, M/s Orix Infrastructure Service Ltd., M/s Orix Leasing and Financial Services India Ltd., Neo Growth and M/s Volkswagen Finance Private Limited and the petitioner is one of the accused in these FIRs. The quantum of proceeds of the crime is expected to increase further as these FIRs are already pending.
27. I have considered the submissions of the parties and perused the record carefully. There is no doubt for the proposition that the right to travel is a part of personal liberty and a person cannot be deprived of it except



according to the procedural established by law as laid down in the *Maneka Gandhi v. Union of India* AIR 1978 SC597.

28. Similar, sentiments were echoed in *Satish Chandra Verma v. Union of India* 2019 SCC OnLine SC 2048 wherein it was *inter-alia* held that the right to travel abroad is an important basic human right. It is pertinent to mention here that in *Karti P. Chidambaram v. Bureau of Immigration & Ors* in W.P. No. 21305 of 2017, it was *inter-alia* held that the LOC cannot be issued as a matter of course. It was *inter-alia* held that only if an accused deliberately evads the arrest and does not appear before the learned Trial Court such a course can be adopted. It was further held that the order issuing LOC is amenable to the power of judicial review as such a decision has adverse civil consequences.

29. This Court in *Directorate of Enforcement v. Kanwar Deep Singh* in Crl.M.C. 1748/2022, *inter-alia* held as under:-

“12. In *Manoj Kumar Babulal Punamiya* (supra) the stem cell treatment was not available in India, and whereas in *Miss Marie Andre* (supra), she was allowed to take treatment of Cancer in Canada as all her family members were stationed there, which is not the case here. The treatment sought for is very much available in India and all his family members are also in India, hence considering the allegations against him and the apprehension during investigation he may not dispose of or otherwise deal with properties in USA to the detriment of investigating agency or he may not return; no indulgence can be given to respondent and hence this application is dismissed.”

30. Similarly, in *Kanwar Deep Singh vs. Directorate of Enforcement* in Crl.M.C. 6638/2022, it was *inter-alia* held as under: -



“This court is conscious of the fact that every person has the right to get effective and proper medical treatment. Anybody has the right to have the medical treatment. Right to live healthy life with dignity is fundamental right of every citizen of this country. Therefore this court has always been of the firm view that the person should get all necessary medical treatment for being health. However, at the same time while dealing with such matter the court has to balance the right of the individual with the right of the prosecuting agency. The right of the prosecuting agency is equally important that is to ensure that the accused attends to the trial and may not abscond. The court has to strike a balance and to see that the person who has approached the court should not be deprived of the effective medical treatment and at the same time prosecuting agency may not suffer on account of non-availability of the accused person. In this regard, the report of the medical board becomes very important. The medical board has specifically stated that the treatment which is required for the petitioner can be provided in various medical institutions across India. It is also a matter of record that the order dated 24.05.2022 has yet not been challenged by the petitioner. In the present circumstances, I consider that the petition is liable to be dismissed.”

31. It is pertinent to mention here that the SLP (Crl) vide Diary No. 24253/2023 filed against the same was dismissed by the Hon'ble Supreme Court.
32. The facts discussed herein above indicate that there are serious allegations against the petitioner. The ground on which the petitioner is seeking permission to travel abroad is allegedly to undergo, “Prophylactic Laser Retinopexy”. It is a matter of the record that this treatment is widely available in India. It is also a matter of record that the Medanta Hospital as well as Dr. Rajendra Prasad, Centre for Ophthalmic Sciences, AIIMS have opined that the treatment of



“Prophylactic Laser Retinopathy” is widely available in many hospitals in India including Medanta Hospital as well as Dr. Rajendra Prasad, Centre for Ophthalmic Sciences, AIIMS.

33. E.D. has contended that treatment of “Prophylactic Laser Retinopathy” is available in India and permission should not be granted to the petitioner to travel abroad. The contention of the petitioner that the passports of her daughter or father may be detained, cannot be accepted as admittedly they are also British nationals.
34. Taking into account that the facts are serious in nature and the medical treatment is available in India, the order of the learned Trial Court is well reasoned, there is no ground to consider the prayer for travel abroad of the petitioner. It is also a settled proposition that the power under Section 482 Cr. PC is to be exercised wherein such power can only be used to prevent the miscarriage of justice or abuse of the process of law. I do not consider that this is the case where the order of the learned Trial Court can be interfered while exercising the powers of Section 482 Cr. PC. The learned Trial Court has dealt with the matter in accordance with the law. Hence, there is no ground for the same, dismissed.
35. In view of the above, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER, 2023/Pallavi