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

+ **CRL.M.C. 4542/2022, CRL.M.A. 18428/2022**

CENTRAL BUREAU OF INVESTIGATION

..... Petitioner

Through: Mr. Anupam S Sharma, SPP, CBI
with Ms. Harpreet Kalsi, Mr. Prakash
Airan, Mr. Ripudaman Sharma, Mr.
Abhishek Batra, Mr. Vasant Rao,
Advs.

versus

RAJESH MISHRA

..... Respondent

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Ujwal Ghai, Mr. Ajay Kumar,
Mr. Udit Bakshi, Mr. Deepali Pawar,
Mr. Anmol Chopra, Mr. Teeksh
Singhal, Mr. Gurjass S Puri, Advs.

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Date of Decision: 25th August, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)



1. The present petition has been filed under section 482 Cr.P.C on behalf of the petitioner/ CBI seeking the setting aside of orders dated 22.08.2022 and 03.09.2022 passed by the Learned Principal District & Session Judge cum Special Judge (PC Act), Rouse Avenue District Court, New Delhi, whereby permission was granted to the respondent to visit USA from 15.09.2022 to 15.03.2023 in “CBI v. Dr. MP Singh & Ors. (RAJESH MISHRA) in RC NO. RC 06A/1999/CBI/SPE/SILCHAR.”
2. FIR/RC no. RC 06 A99SIL was registered by CBI U/s 120B,/420/467/468/471 and 477(A) IPC Read with Section 13(1)(d) and 13(2) of the P.C. Act on 06.12.1999 against Dr. Mithilesh Prasad Singh, the then Vice Chancellor, Central Agricultural University, Imphal, Director (Extension), G.P University of Agriculture & Technology and other accused persons on the conversion of preliminary enquiry bearing no. PE1(A)99SIL wherein it was alleged that the actual expenditure on the purchase of books was made with corrupt practices at inflated prices and the enquiry was conducted subsequent to the order dated 09.12.1998 passed by the Hon’ble Guwahati High Court, Imphal Bench in the case titled ‘CAU Employees Association v. Dr M.P Singh and others’.
3. The facts of the case are that Dr. M.P. Singh has abused and misused his official position in conspiracy with Co-accused Rajesh Mishra from the years 1996 to 1998. Pursuant to this Rajesh Mishra submitted inflated bills relating to the supply of books to Central



Agricultural University, Imphal. Respondent has been a US citizen since 2005 and is working as an Automotive Sales Consultant in an Automotive company in Virginia, USA which requires physical presence at his job. Petitioner/CBI registered an FIR/RC no. RC 06 A99SIL dated 06.12.1999 and a preliminary enquiry was raised against the accused persons wherein it was alleged that the accused persons had made an excess expenditure concerning the allocation of the books to be issued to Central Agricultural University (CAU) against the allocated budget. Respondent in the present case was alleged to have supplied books to CAU and had generated invoices with falsely inflated prices after manipulating the original invoices.

4. It has been submitted by Mr. Anupam S Sharma, SPP, CBI that the accused has been granted bail by the Ld. special judge without appreciating the facts and circumstances of the present case which are grave and serious in nature. It has been submitted that there is an apprehension of the accused of evading the law by fleeing the country as he did not join the investigation earlier.
5. It is has been alleged that the accused/ Respondent was absconding for 17 years even when he was aware of the pendency of the litigation against him and there was also an LOC issued against him. The respondent was arrested not because he wanted to surrender but because he was detained by the AFRRO in pursuance of the pending lookout Order. The impugned order passed by the Ld. Special Judge provides a precise window of opportunity for the Respondent to



abscond again and not submit himself to the jurisdiction of this Hon'ble Court for the purposes of trial and administration of justice.

6. It has been further submitted that purportedly having relatives residing in India does not eradicate the risk of evading prosecution. It has been submitted that the respondent has been allowed travel for a period of 6 months without giving due consideration to his propensity to abscond and his previous conduct. Learned counsel has placed reliance upon the judgement of Supreme court in ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation*** AIR 2013 SC 1933, wherein it was held that the economic offences constitute a class apart and involve a huge loss of public funds and pose a serious threat to the financial health of the country.
7. Learned counsel for the respondent has vehemently opposed the above-made submissions. It is submitted that the respondent is complying with every condition of the bail granted to him and has no intention of fleeing and evading the process of law. The accused was named in the FIR at a later stage and earlier he was not aware of any litigation proceedings against him. The accused has joined the investigation as and when the notice was served to him.
8. The reliance has been placed upon the judgement of ***Chen Hsui Yun vs. Directorate Of Revenue Intelligence***, 2021 SCC OnLine Del 3241 wherein the coordinate bench of this court had dealt with a similar case of economic offence and had granted the Accused the permission to travel abroad for a period of six months. Further reliance has been



placed upon the judgement of Supreme Court in *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and others*, AIR 1955 SC 367 wherein the right to travel abroad has been considered a valuable part of the right to life as enshrined in Article 21.

9. Learned counsel for the respondent has further submitted that the same issue was also dealt with by this Court in the case of *Bina K. Ramani vs State* 2010 SCC OnLine Del 484 as well as by the Gujarat High Court in the case *Kenal Vrajmohan Shah vs Department of Revenue Intelligence* 2016 SCC OnLine Guj 10039 wherein the condition of surrendering passport and obtaining permission from the competent Court was dispensed with a direction to the petitioner to furnish an undertaking in writing to the Registrar of the Court to make themselves available during the course of an investigation or the trial as and when required apart from furnishing the details of travel to the Investigating Officer, including the place where such person was to stay, the countries they were to visit and the date of departure and of return. Such condition was ordered to be incorporated as a condition of bail till the charge sheet was filed and after the filing of the charge sheet, the trial of the case was ordered not to be adjourned or deferred on the ground of travelling abroad.
10. Further, learned counsel for the respondent has placed reliance upon the judgement of the co-ordinate bench of this Hon'ble High Court in *Nitya Nand Gautam vs Central Bureau of Investigation*, 2023 SCC



OnLine Del 723 wherein the court has enunciated the fact that the right to travel is a valuable fundamental right and should be curtailed only in exceptional circumstances.

11. This court has considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent.
12. Petitioner/Rajesh Mishra was granted permission to travel abroad for a period of 6 months from 15.09.2022 to 15.03.2023 on fulfilling the conditions imposed by the Special Judge, Rouse Avenue District Court vide order dated 22.08.2022 on the grounds that the accused is the sole earner of the family which comprises of non-working wife and four minor children and are totally dependent on him for all of their needs. Learned ASJ also observed that the accused was also obligated to meet his financial obligations including repayments of the loan taken to purchase a house. The accused has also been consistently travelling to India as his family is residing in India and due to which the accused's conduct may not pose a risk of evading the prosecution. On his failure to physically report for his job and manage his financial obligations, he would incur serious consequences of losing his job as well as his property.
13. This court is of the view that the right to travel abroad is covered under the ambit of Article 21 and is an important basic human right. This right can be extended to the private life of an individual including his family. The accused in the present case is the sole bread earner of the family and has a wife and kids dependent upon him.



Curtailing the right to travel abroad to his family and back to his job will not meet the ends of justice. It has also been held by Supreme Court in the ***Maneka Gandhi v. Union of India*** (1978) 1 SCC 248 that *“We may begin the discussion of this question by first considering the nature and significance of the right to go abroad. It cannot be disputed that there must exist a basically free sphere for man, resulting from the nature and dignity of the human being as the bearer of the highest spiritual and moral values. This basic freedom of the human being is expressed at various levels and is reflected in various basic rights. Freedom to go abroad is one of such rights, for the nature of man as a free agent necessarily involves free movement on his part. There, can be no doubt that if the purpose and the sense of the State is to protect personality and its development, as indeed it should be of any liberal democratic State, freedom to go abroad must be given its due place amongst the basic rights.”*

14. The court while exercising the power under Section 482 Cr. P.C. does not function as a court of appeal or revision. The powers under Section 482 Cr. P.C., are of wide plenitude but have to be exercised sparingly with caution. The object behind the exercise of such power should be to do real and substantial justice for the administration of which the courts exist. The Supreme Court in ***Sushil Suri v. Central Bureau of Investigation and another***, (2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed that *“Section 482 Code of Criminal Procedure itself*



envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.”

15. In view of the facts and circumstances and the observations made this court is of the view that there is no illegality, infirmity or perversity in the order of the Learned Trial Court. Hence, the present petition stands dismissed.

16. The Respondent may move an appropriate application before the learned Trial Court for rescheduling the dates for the permission to travel abroad.

DINESH KUMAR SHARMA, J

AUGUST 25, 2023

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