IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3133 OF 2024
WITH
INTERIM APPLICATION (ST.) NO. 15537 OF 2024
IN
CRIMINAL WRIT PETITION NO. 3133 OF 2024

Central Bureau of Investigation
Head of Branch, CBI, SC 2nd floor,
B Wing, Plot No.5B, CBI HQ,
CGO Complex, Lodhi Road, New Delhi. .... Petitioner

Vs.

1. Indrani Mukerjea
Age-52 years, R/O. 19 Marlow, 62-B,
Pochkhanawala Road,
Worli, Mumbai – 400030.

2. State of Maharashtra .... Respondents

Mr. Shreeram Shirsat, Special PP a/w. Mr. Nishad Mokashi,
Mr. Shekhar Mane and Ms. Karishma Rajesh for the Petitioner – CBI.
Mr. Ranjeet Sangle a/w. Mr.Chaitanya Kulkarni and Ms. Nehal Dhruve.
for Respondent No.1.
Ms. R.V. Newton, APP for the State.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 20th SEPTEMBER, 2024.

PRONOUNCED ON : 27th SEPTEMBER, 2024.

JUDGMENT :-

. Present Petition filed under Article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code seeks for quashing and setting-aside of an impugned Order dated 19th July, 2024 passed by the learned Special Judge (CBI), Special Court for CBI, Greater Bombay, in CBI Special Case No.117/2015 thereby the learned Judge allowed the Application at Exhibit-1103 filed by Respondent No.1, seeking for permission to travel abroad.

2) Heard Mr. Shreeram Shirsat, learned Special PP for the Petitioner-CBI, Mr. Ranjeet Sangle, learned counsel for Respondent No.1 and Ms. Newton, learned APP for the State. Perused the Petition and the written submission.

3) Rule. Rule made returnable forthwith and with consent of the parties, heard finally.

4) The facts giving rise to this Petition are as under :-

4.1) That, the Respondent No.1 and others are facing the said case for the alleged offences punishable under Sections 120-B r/w. 364, 302, 201 and 203, 364 r/w. 120-B, 302 r/w. 120-B, 307 r/w. 34 or 120-B, 201/120-B, 203/120-B and 471 of the Indian Penal Code and Section 66-A of the Information Technology Act, 2000, at the instance of Petitioner.

4.2) On 14th June 2024, Respondent No.1 filed the Application at Exhibit-1103 and prayed the trial Court to allow her to travel Europe i.e., Spain and United Kingdom. Said prayer was based on the ground that, the Respondent No.1 is a British national and holding British passport; that, the Respondent No.1 is required to execute documents *vis-a-vis* her bank account at *Banco Sabadell* in Spain. The Respondent No.1 also needs to update her Will with respect to her property in Spain for which she needs to be present in front of Notary. It was stated that, the Respondent No.1 intends to travel to Spain for her bank, property and Will work and to United Kingdom. The Respondent No.1 has been admitted to bail by the Hon'ble Supreme Court. However, one of the bail conditions is that, the Respondent No.1 shall not leave India without permission of the said Court.

5) The Petitioner filed its reply at Exhibit-1103/A and resisted the Application for various reasons including that the Respondent No.1 is a flight risk, hence, the Application be rejected.

6) After considering the Application and reply in the light of the rival submission and record of the case, the trial Court allowed the Application at Exhibit-1103 for the reasons that, right to travel abroad is a valuable right and integral part of the right to personal liberty. Such right of an accused facing a criminal trial, however, is not absolute but subject to certain conditions, necessary to ensure presence of the accused for trial. Though there are no straight jacket considerations for deciding such Applications, the conduct of the accused during the trial, compliance of bail conditions, need and necessity to travel abroad, apprehension of flight risk and its cumulative effect on the progress of the trial, may be some of the relevant factors amongst others for considering such an Application.

6.1) The trial Court further noted that, the Respondent No.1 has to update her Will and to remove certain name from it, which is necessary post her divorce. The relevant bank account has been deactivated due to non-user. Therefore, physical presence of Respondent No.1 is necessary to update the Will and activate the bank account. This requirement is supported by certain documents produced on record. The contention that the Respondent No.1 is a flight risk is rejected for the reason that, Extradition Treaty between the India and United Kingdom is in existence, the Respondent No.1 has regularly attended the case on the given dates without violating bail conditions and that, she has deep roots in India.

7) Mr. Shirsat, the learned Special PP for Petitioner vehemently submitted that, the Respondent No.1 has been facing a charge of a very serious offence. So far, the Petitioner has examined 93 prosecution witnesses in the case and wants to examine more, but its numbers will be less compared to the witnesses already examined. So, predictably, the trial may be over in a reasonable time. He submitted that, there is more than sufficient material in the evidence which evinces Respondent No.1's deep involvement in the aforesaid crime and she has no escape from the punishment therefor. That, whatever works the Respondent No.1 wants to perform by travelling to Spain and United Kingdom, can be easily performed from India. Some can be performed by her said Power of Attorney *(for short 'POA')* himself. That, apart, the nature of the said

works is not so compelling to allow the Respondent No.1 to travel abroad at the risk of her absconding. According to learned counsel Mr. Shirsat, the grounds stated in the Application were not only artificial but also not justifiable. Therefore, there is every possibility that, the Respondent No.1 will not return to India from abroad. In that event, the Petitioner-CBI will have to take huge efforts to extradite the Respondent No.1, which will be not only time consuming but also burden the Government exchequer, unfairly. And the end result will be enormous delay in conclusion of the trial and disposal of the said case, which is not in the interest of justice. There is also possibility of the Respondent No.1 going to any country in Schengen area, some of which may have no extradition treaty with India. The Special Court, however, ignored the aforementioned contention which ultimately led to grant the Application at Exhibit-1103. As such, the impugned Order is erroneous and it is liable to be quashed and set aside. Mr. Shirsat, the learned Special PP has relied upon following decisions :-

(i) ***Surinder Kaur v/s. State of Punjab 2010 SCC OnLine P&H 5577.***

(ii) ***K. Zahir Hussain v/s. The Inspector of Police, CBI, ACB, Chennai 2014 SCC OnLine Mad 5544***.

(iii) ***Chand Sayed Masood v/s. The State of Maharashtra and Ors. in Criminal Application No.301 of 2023 of Bombay High Court.***

8) The foundation for the Application at Exhibit-1103 were the e-mails dated 13th September 2023 and 12th July 2024, which are identical.

By said e-mails, Mr. Pablo Iturmendi Kustner, POA of Respondent No.1, mainly conveyed her as under :-

> *"Please try to arrange your trip to Spain to be able to conclude the process of changes to your bank account in Banco Sabadell in Spain. The Account you have had been deactivated due to non-compliance of documentation and is in the name of yourself and your ex-husband. You need to make a new one in your name to reinstate the standing orders and pay your taxes and bills in time which are already due with an inordinate delay and can't be kept pending indefinitely!*
> *While in Spain, you have to personally attend the Notary to update your Will and remove Mr. Pratim Mukerjea as beneficiary of your estate in Spain. Be advised that post your divorce, these changes ought to have been carried out immediately but have remained pending only due to your personal physical absence."*

9) In this petition, the aforesaid e-mails have been supplemented with following details, to justify the impugned Order :

> *(i) Activation of Bank Euro Account (which is in joint names) in Bank of Sabadell to access funds due to non-operation for more than 9 years and closure of the said account.*
> *(ii) Opening of New Euro Bank Account.*
> *(iii) Will + POA*
> *(iv) Activation of bank accounts in Coutts and Natwest Bank to access funds.*
> *(v) <u>Property Work :-</u>*
> *a) Repairs and Maintenance of immovable property. (This will be done within the 10 days of permission period).*
> *b) Restoration of utilities (This will be done within the 10 days of permission period).*
> *(vi) Appointing of Real Estate Agent for renting premises for personal income. (This will be done within the 10 days of permission period).*
> *(vii) Digital Certificate.*

10) Mr. Sangle, the learned counsel for Respondent No.1 submitted that, the works as detailed above and stated in the said e-mails are same. He submitted that, the Will has to be updated in view of the dissolution of the marriage of Respondent No.1. However, the Respondent No.1 being a national of United Kingdom, the procedure in Spain is not applicable in the United Kingdom, because Respondent No.1 shall be physically present there to update the Will, in view of Article 670 of the Civil Code of Spain. The bio-metrics of the Respondent No.1 are required to be registered for taking steps in respect of the deactivated bank account and to open a new bank account. These works including works related to property, payments of tax etc. cannot be performed by Mr.Pablo Iturmendi Kustner, POA of Respondent No.1. In short, according to Mr. Kulkarni, the learned counsel, the Power of Attorney executed by Respondent No.1 in favour of Mr.Pablo is of no help in the present circumstances and therefore only the learned Judge of the trial Court allowed the Application at Exhibit-1103. He submitted that, the regular attendance of the Respondent No.1 in the trial has added to the grant of said reliefs. In this background and in view of the settled principle of law, the impugned Order cannot be termed as erroneous so as to quash and set aside the same. Thus, Petition is devoid of merits and liable be dismissed.

11) Relying upon the e-mail dated 16th August, 2024 received

from Mr. Naresh Kumar, Director, CVP and other material, the learned Special PP Mr. Shirsat submitted that, all the works intended to be performed by the Respondent No.1 by travelling abroad, can be easily performed from India. Certain works like opening of bank account/s, payments of taxes, etc. can be even performed by her POA. Therefore, it is a baseless claim by the Respondent No.1 that her physical presence is required to perform the said works.

12) On careful perusal of the said emails and the written submissions, what Mr. Shirsat, the learned Special PP has submitted, is correct that the works stated in the Application at Exhibit-1103, for which the Respondent No.1 wants to travel abroad, are possible from India. However, the Respondent No.1 has not attempted at least once to perform any of the said works with the help of the authorities concerned in India and the authorities representing the Government of Spain as well as United Kingdom. Even she did not try to pay the taxes and similar other dues by transferring necessary amount in the bank account of the department concerned through the online banking facilities available in India or with the help of the POA. The taxes, etc. are not huge. The Respondent No.1 did not explain as to why she did not make such an attempt so far. Before allowing the Application at Exhibit-1103, the learned Judge of the trial Court has not inquired as to whether the Respondent No.1 can perform the desired works from India or not.

13) Nothing is pointed from the record by learned counsel for the Respondent No.1, to clarify as to whether the document of dissolution of Respondent No.1's marriage mentions about any arrangement in respect of the said joint bank account and the property at abroad. The details of the works such as repairs and maintenance of immovable property, restoration of utilities and appointing of Real Estate Agent for renting the premises for personal income etc. neither informed in the subject emails nor stated in the Application at Exhibit-1103. Similarly, the said Application was silent about the work/s at United Kingdom.

14) The Petitioner has produced a translated copy of the POA that Respondent No.1 has executed in favour of Mr. Pablo. Contents in the said copy are not controverted by Respondent No.1. On close reading of the said document it is evident that, certain authority has been given to the POA. Considering this document, it cannot be said that, the POA is not capable do the bank related works and payment of tax on behalf of the Respondent No.1, which she wants to do personally, by travelling to the Spain and United Kingdom. The relevant part of the said authority is as under :

> (i) to purchase, or in any other way acquire, all kinds of movable or immovable property, royalties or shares in the same, with total freedom as regards the setting of the price, agreements, conditions and acceptance of community regimes over the same, delivering the price in cash, in the document

acquired prior to the same etc.

(ii) Request any amount of money on loan with a mortgage, setting the interest, term and form of repayment, constituting on the properties or shares thereof the real estate guarantee, especially mortgages that may be constituted, etc. and may appear before a Public Notary on behalf of the grantors, executing the public deeds that may be required.

(iii) To open and operate with current accounts or savings accounts that the authorized parties have opened or may open in any bank or savings bank and to cancel them if necessary, and for this purpose, to dispose of the funds in said accounts, by means of cheque transfers or orders to the institution, to direct debit payments and collections, to receive interest, to request account statements and challenge them, if applicable, to request cheque books against said accounts, to cancel payment orders and, in short, to carry out any operations permitted by banking legislation, bearing in mind that the present power of attorney is conferred in the broadest possible sense of operation with said accounts.

(iv) To appear before all kind of authorities, Courts, Notaries and certain other authorities in tax etc. and ecclesiastical matters, signing and presenting all kinds of applications, declarations, reports, balance sheets or settlements etc.;

15) In the case of ***Surinder Kaur*** (supra), the Petitioner was facing a prosecution under Sections 506, 341, 323, 148, 149 and 120-B IPC. He sought permission to go abroad, however, there was no compulsive ground to grant the said permission. The ground stated was not sufficient.

Hence, permission to go abroad was declined. In the case of ***K. Zahir Hussain*** (supra), looking at the gravity of the offence alleged against the Petitioner/Accused, the possibility of the Petitioner fleeing the country to escape the trial was cemented upon the facts and circumstances of the case. Therefore, the permission to travel abroad for the reason of Business/Official Considerations/Works of the Petitioner, was refused holding that, 'Business Considerations' cannot be given primacy over the gravity of the offence alleged against the Petitioner. In ***Chand Sayed Masood*** (supra), the proceeds of the crime was more than Rs.500 crore and material part thereof was siphoned off and parked in various other countries like Singapore, USA, Switzerland, etc. The Respondent-ED apprehended that, the Petitioner wanted to deal with the said amount by travelling abroad, which could have ultimately frustrated the object of PMLA. Therefore, the Order of rejection of the permission to travel abroad by the trial Court was upheld by this Court.

16) Conspectus of the aforesaid discussion is that, the Respondent No.1 has no sufficient and reasonable case to permit her to travel abroad. The learned trial Court, however, has not considered the aforesaid aspects before considering the Application Exhibit-1103 in favour of the Respondent No.1. As such, the impugned Order is not sustainable in law and liable to be quashed and set aside. Petition thus succeeds. Hence, following Order is passed :

- ORDER -

i) Writ Petition No.3133 of 2024 is allowed.

ii) The impugned Order dated 19th July, 2024 passed by the learned Special Judge (CBI), Special Court for CBI, Greater Bombay, in CBI Special Case No.117/2015 below the Application at Exhibit-1103 filed by Respondent No.1, is quashed and set aside.

iii) As a result, Interim Application (St.) No.15537 of 2024 does not survive and is accordingly disposed of.

iv) However, it is made clear that, if the Respondent No.1 wishes to perform the aforesaid works from India, the statutory authorities in India to extend her the necessary support for the same, with the assistance of the Embassy of Spain and/or United Kingdom, as the case may be.

v) Rule made absolute.

PREETI HEERO JAYANI

Digitally signed by PREETI HEERO JAYANI
Date: 2024.09.30 19:20:50 +0530

(SHYAM C. CHANDAK, J.)