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W.P.No.24906 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2024

Pronounced on : 10.09.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.24906 of 2024

Karthik Parthiban

.... Petitioner

Vs

1.The Superintendent of Police
Central Bureau of Investigation (CBI)
Bank Securities and Frauds Branch
No.36, Bellary Road, Ganga Nagar
Bangalore – 32.

2.Foreigner Regional Registration Officer (FRRO)
Bureau of Immigration
Ministry of Home Affairs
Government of India
No.26, Haddows Road
Chennai – 600 006.

3.The Assistant Foreigners Regional Registration Officer
Bureau of Immigration
Anna International Airport
Chennai – 600 027.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the respondents to permit the



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petitioner to travel to Malaysia immediately for the time period fixed by this Court and pass such or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.Vijayan Subramanian

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor (CBI) for R1
Mr.V.T.Balaji
Senior Panel Counsel for R2 & R3

ORDER

The petitioner herein is the director of A2, a registered company in C.C. No. 554 of 2023, now pending for framing of charges before the Additional Chief Metropolitan Magistrate Court, Chennai. He is aged about 35 years and is a citizen of Seychelles, an east African country. He is stuck in India following a LOC issued by the CBI.

2. The petitioner was barely married for about a year, and was working in Singapore when he was implicated in this case. His parents are Indian citizens who reside in Malaysia, and his wife is a Malaysian citizen who continues to reside there.



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3. In the present petition, the petitioner seeks the leave of this Court to visit his parents between 11.09.2024 and 11.10.2024 in Malaysia. He has pleaded that:

- a) Recently his father was assaulted, abducted and was robbed, in consequence of which the mental and physical health of his parents had deteriorated. Though appropriate criminal proceedings have been initiated against the assailants, the petitioner could not assist his father in initiating the criminal proceedings as he was forced to remain in India, fettered by the LOC. He therefore, seeks the leave of the Court to visit his family in Malaysia between the aforesaid dates.
- b) On two earlier occasions, the petitioner had been granted leave by this court to temporarily leave India vide Order of this Court in W.P.15517 of 2023, dated 04.08.2023 and in W.P.28915 of 2023, dated 07.11.2023
- c) In *Maneka Gandhi case* [AIR 1978 SC 597], the line of demarcation separating Articles 19 and 21 has been erased, and right to travel abroad has been read as a fundamental right and that even though he is a citizen of Seychelles, he is entitled to right to dignified life under Article 21 and hence he may be permitted to travel abroad.

He has also given an undertaking that he would return to India and abide by



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such conditions which this court may impose.

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4. The learned Prosecutor for CBI has filed his counter wherein it is alleged:

(a) That the petitioner's company Broadcourt Investments Ltd., was involved in a large scale financial scam wherein the petitioner as its erstwhile Director had played a key role in diverting the loan sanctioned by the IDBI bank in favour of M/s Axel Sunshine Limited (A1), to aid the closure of a loan advanced to M/s WinWind Oy (arrayed as A7 in the aforesaid C.C.) by the same bank which has since been declared NPA. This diversion has resulted in a loss of Rs. 600 crores to the IDBI bank. He is a nephew of A12, who acted as the mastermind behind the diversion of the loan sanctioned by the IDBI bank to A1 company.

(b) Article 21 of the Constitution cannot be expanded to include cases like that of the petitioner especially when the LOC was issued pursuant to such a huge economic fraud. If the petitioner is allowed to leave the country, there is a good chance that he will not return to India to comply with the formalities of investigation and to submit to the authority of the Courts, resulting in the loss of Rs. 600 crores to



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the public at large. Therefore, the petitioner should not be permitted to leave the country.

5. Heard both sides. They stuck to their line of pleadings in their arguments. Should the petitioner be given the leave to travel abroad? Is it a case of , *'To be or not to be'*, but still not a Shakespearean dilemma, as the Constitution shows the way to this court for resolving it.

6. The investigation is now complete and the final report of the investigating agency has been laid before the Court. From now onwards, more than the CBI, the concern will be that of the Court to ensure that an accused person against whom a charge is framed or to be framed, but is allowed to travel abroad, returns to India, submit to our law and face the trial.

7. Somewhere in the course of his submissions, the counsel for the CBI submitted that there is no extradition treaty between India where the petitioner is likely to face trial in the eventuality of the trial court framing any charges against him, and Seychelles whose passport the petitioner holds. His apprehension cannot be discounted, but it should not be magnified either. After



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all the petitioner had left the country twice earlier and had returned, and this previous conduct of his in complying with the conditions imposed on him by this Court cannot be overlooked.

8.1 Is a foreign national facing trial in India entitled to leave India temporarily and how far Article 21 secures the said right? The learned prosecutor says that Article 21 cannot be invoked where a foreign national is alleged to have been involved in a crime, and if at all any, it ought to be need based. The apprehension of the CBI is not complicated enough that it needs a decoding: the fear is that a foreign national might escape eternally. But then if a foreign national intends to escape, he still can make use of a need-based-leave for travel abroad as an opportunity to escape.

8.2 The anxiety of the criminal justice administration is, and at all times can be, only to ensure that the person charged with the commission of crime and facing trial for the charges in this country, submits to the jurisdiction of our courts and participates in the trial. It is, and at all times ought to be, least concerned how an accused person lives his life and does his or her business. Our criminal justice administration, nay even the criminal justice system developed by law



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holds right to dignified life of even a convict supreme. In ***Sunil Batra Vs Delhi Administration (II)*** [(1980) 3 SCC 488], it was held that a convict only loses his freedom of movement, but not his right to live with dignity, which Article 21 of the Constitution recognises as inhering in every human being living in this country – both nationals and foreigners alike. The objective to secure the presence of an accused for his participation in the trial and to undergo any penal consequences in the eventuality of the Court upholding the charges, may not be construed as a licence to enable any interference with the private life of an accused. Criminal law is best administered when the inconvenience it leaves on the personal lives of the accused persons is least, lest the faith this country has on the Constitutional principles emanating from the judicial interpretation of Article 21 will be rendered farcical. There can never be an insult to the Constitution and what it declares.

9. If Article 21 by its very wording applies to non-citizens, then right to personal life of any foreign national facing a criminal charge in India must also has be recognised as falling within his right to his dignified existence. Anything personal is part of one's privacy and unless it is enabled by law, it cannot be invaded, even if the accused person is a foreign national. See: ***K.S.Puttaswamy***



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Vs Union of India [(2017) 10 SCC 1].

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10. It could now be derived that right to travel abroad need not necessarily be need based. To reiterate, if the concern of the criminal justice administration is only to ensure the participation of the accused in a criminal proceeding, then law and its administration should focus only on that, and not on any other ancillary issues affecting the personal lives and privacy of accused persons. If not, we may end up converting the stay of a foreign national into a kind of house arrest in this country. That may not be an ideal way to understand the Constitution. Hypothetically, if after a couple of decades, a foreigner, accused of committing a crime in India, is acquitted, will the legal system recompense him of all that he has lost? More so, when a foreign national is not in judicial custody.

11. Right to travel abroad as forming an integral facet of the fundamental rights as declared under the Constitution has engaged the Courts in this country since few decades. Way back in 1966, a Full Bench of the Kerala High Court in ***Francis Manjooran Vs Government of India*** [AIR 1966 Ker 20] speaking through its Chief Justice M.S Menon observed that the freedom to travel has been part of the mystique of the freedom of man in the long and discontinuous



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debate between him and his sovereign or political authority. The learned Chief

Justice went on to say:

“The story of the freedoms also shows that many of them cannot to exist in the fullness of their plenitude, and that a tailoring is essential for even a partial survival of all of them Liberty, Equality and Fraternity were the watchwords of the French Revolution “We hold these truths to be self-evident”, said the earlier Declaration of American Independence, “that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are Life, Liberty and the Pursuit of Happiness” It was not long before it was realised that there was a basic compatibility between liberty and equality, as each of them presupposed an entirely different theory of the purpose of a state. The emphasis on liberty at the expense of equality produced the laissezfaire of Victorian times, and the emphasis on equality at the expense of liberty produced the communism of the present day What a welfare state like that of this country really attempts is a compromise between liberty and equality, sacrificing a part of both, so that neither of them will completely disappear from the life of our nation.”

This decision was affirmed by the Supreme Court in **Satwant Singh Vs D. Ramarathanam**, [AIR 1967 SC 1836], and later in **Maneka Gandhi Vs Union of India**, [AIR 1978 SC 597]. Therefore, it would be a constitutional anathema to absolutely bar an accused person from travelling abroad to attend to his



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private affairs merely because he or she is a foreign national facing trial of criminal charges in India.

12. There is therefore, a compelling need to convert our ability to expand the right to life as a Constitutional theory into plain action. Be it our sense of appreciation or respect for application, we have one Constitution, and it must be respected. Therefore, more than deliberating on whether this Court should grant leave to the petitioner to leave the country temporarily, the question must be why this court should not grant the petitioner to travel abroad.

13. Having stated thus, this court is conscious that it shall not be overzealous in protecting the personal lives of foreign nationals (which include his or her right to travel abroad), without adequate mechanism to ensure his safe return to India for participating in the criminal proceedings. This essentially relates to the conditions which the court may have to impose, but it is underscored that it shall not be onerous and incapable of being complied with.

14. This Court therefore, allows this petition and grants him the leave to travel and stay in Malaysia for one month. In his affidavit, the petitioner states that



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he wants to be away from India between 11.09.2024 and 11.10.2024. But that is least likely since this order is pronounced only today (10.09.2024). Therefore, the petitioner may have to provide a fresh schedule of his travel to Malaysia, and the period of one month will commence from the date on which he leaves India as per his revised schedule. The leave herein granted is subjected to following conditions:

- (a) the petitioner is now required to provide a fresh schedule of his travel plan to Malaysia, both to the trial Court and the CBI;
- (b) the petitioner is granted leave to travel to Malaysia strictly as per the schedule which the petitioner is required to provide in terms of condition in 14(a);
- (c) the petitioner shall reside only at the address given in his undertaking affidavit [No.2, Jalan Pantai 9/7, 46000 Petaling Jaya, Selangor, Malaysia], and is directed not to change his residence or his place of stay without prior notice to the CBI;
- (d) the petitioner shall not leave Malaysia during the period of his stay in Malaysia;
- (e) the petitioner shall surrender his passport to the Indian High Commission at Malaysia, and shall collect it back only before his



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- return to India as per the schedule to be provided;
- (f) an acknowledgement of surrendering his passport to the Indian High Commission shall be communicated to the CBI forthwith;
- (g) the petitioner shall execute a personal bond for Rs.10.0 lakhs and also produce two sureties for Rs.10.0 lakhs each before the Additional Chief Metropolitan Magistrate Court, Chennai. Of the two sureties, one surety must be a relative. The two sureties should file an affidavit separately before the Additional Chief Metropolitan Magistrate Court, Chennai, undertaking that the petitioner will return back to India on or before the date of return as per the schedule to be provided by the petitioner;
- (h) One of the sureties (either a relative or the business associate of the petitioner) shall possess a valid Indian passport and should have travelled at least couple of times abroad. The said surety holding the above referred to Indian passport shall leave his/her passport with the CBI. On deposit of such passport, the CBI shall issue an acknowledgement of receiving that passport and hold the passport till the return of the petitioner back to India.
- (i) The LOC issued by the CBI against the petitioner shall stand



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suspended during the period when the petitioner goes to Malaysia in terms of this order.

14. With the above directions, the writ petition stands allowed. No costs.

10.09.2024

Index : Yes / No

Citation : Yes / No

Speaking order / Non-speaking order
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N.SESHASAYEE.J.,

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Pre-delivery order in
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