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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 02.04.2024**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No.34128 of 2023**

Shri Mohammed Mohideen Isthikar

... Petitioner

Vs.

1.Bureau of Immigration,  
Haddows Road, Thousand Lights West,  
Thousand Lights, Chennai – 600 008.

2.Deputy Director,  
Director of Enforcement, Chennai  
Office of the Joint Director,  
Enforcement Directorate, Chennai Zonal Office,  
2<sup>nd</sup> and 3<sup>rd</sup> Floor, Murugesu Naicker Complex,  
No.84, Creams Road, Chennai – 600 006.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent to permit the petitioner to travel abroad.

For Petitioner

: Mr.Nithyaesh Natraj  
For M/s.Anirudh A.Sriram

For Respondents

: Mr.N.Ramesh  
Special Public Prosecutor



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## **ORDER**

The Writ of Mandamus has been instituted to direct the respondents 1 and 2 to permit the petitioner to travel abroad.

2. Mr.Nithyaesh Natraj, learned counsel for the petitioner would submit that a look out notice has been issued against the petitioner and therefore, the petitioner is unable to travel abroad. A case registered against the petitioner under the various provisions of the Foreign Exchange Management Act (FEMA), 1999 has been instituted and under investigation. The petitioner has fully cooperated with the respondents and provided the informations available with him. That being so, the writ petition is to be considered to direct the respondents to permit the petitioner to travel abroad.

3. Admittedly, a case under the FEMA, 1999 is pending against the petitioner and he is running a business in Hong Kong. The learned counsel for the petitioner states that the petitioner has to travel Hong Kong to run his business. It is further stated that his properties are attached and the family of the petitioner is residing in Chennai. Therefore, the petitioner may be permitted to travel abroad.



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4. The learned counsel for the petitioner relied on the order dated 13.09.2023 passed in ***W.P.No.22098 of 2023*** by stating that similar permission to travel abroad was granted in the writ petition in favour of one Mr.Mohammed Jawahar.

5. Mr.Ramesh, learned Special Public Prosecutor appearing on behalf of the respondents strenuously opposed by stating that the petitioner has not provided the statement of Bank accounts of M/s.China Top Technology Limited, Hong Kong, a company owned by the petitioner. The petitioner is a Director and the company wholly owned by him. The petitioner has not submitted any details regarding operational activities of M/s.China Top Technology Limited. Thus, the petitioner has failed to cooperate with the Investigating Agency. The investigation against the petitioner is in progress and there is risk of flying abroad and therefore, the writ petition is to be rejected.

6. It is contended by the respondents that the petitioner in his capacity of Director of M/s.China Top Technology Limited has violated various



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provisions of the FEMA, 1999 and made himself liable for penalty under FEMA, 1999 and even prosecution under Section 13(1-A) of FEMA, 1999 and can be subjected to imprisonment for a term not exceeding five years.

7. A First Information Report (FIR) No.140 of 2022 on the file of Central Crime Branch (CCB), Chennai has been registered based on the findings of the investigation done by the Directorate of Enforcement into six cases of FEMA investigation. Larger criminal conspiracy took place during the year 2011 to 2014 by some private individuals in connivance with the officials of the IndusInd Bank with sole intent to deprive India of its foreign exchange by way of sending remittance on the basis of forged documents including forged bills of entry and M/s.Unique Telecom is one of such entity from whom M/s.China Top Technology Limited has received US Dollars 11915150 (Rs.64,82,64,345/-) and Mr.Mohammed Mohideen Ishtikar, the petitioner, who is the beneficial owner of M/s.China Top Technology Limited, has failed to supply the goods and has violated Section 4 of the Foreign Exchange Management Act, 1999.

8. As per the respondents, the act of the petitioner by receiving the



foreign outwards remittance into his entity M/s.China Top Technology Limited under the grab of advance import remittance has got wide implications/ramification by affecting the economic fabric of India, but also has got cross border implications. As such the presence of the petitioner is very much essential for investigations/enquiry and subsequent adjudication proceedings for the contraventions if any found to have been committed by the petitioner. It is settled law that though the right to travel abroad is recognised under Article 21 of the Constitution of India, yet it is not an absolute right and which cannot be claimed as a matter of right without any restrictions.

9. The respondents relied on the judgments of the Hon'ble Supreme Court of India as under:

*“The Hon'ble Supreme Court in **Tarun Kumar Vs. Assistant Director, Directorate of Enforcement (Cri.A. No. of 2023 in SLP (Crl.) No.9431 of 2023)** dated 20.11.2023 emphasised on the distinct nature of economic offences.*

*“Para 22 ..... The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and*



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*considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are **Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation, Nimmagadda Prasad vs. Central Bureau of Investigation, Gautam Kundu vs. Directorate of Enforcement (supra), State of Bihar and Another vs. Amit Kumar alias Bachcha Rai.***

*This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat vs. Mohanlal Jitamalji Porwal and Another as under:-*

*“Para 5... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at*



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*the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...”*

**9.1 Also in *Rana Ayyub Vs. Union of India W.P.(CRL) 714 of 2022 dated 04.04.2022*, the Delhi High Court noted that**

*Para 13. “..... However, a balance has to be struck qua the right of the investigation agency to investigate the instant matter as well as the fundamental right of the petitioner of movement and free speech.”*

**9.2 Furthermore, in *E.V. Perumal Samy Reddy Vs. State (Crl.O.P.No.27741 of 2013) dated 31.10.2013*, the Madras High Court observed that**

*“Para 10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arise to apprehend persons, who have ability to fly, flee*



*away the country. So, L.O.C. orders are issued. It is an harmonious way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis."*

10. Further the Hon'ble Supreme Court in the case of ***The Assistant Commissioner of State Tax and Others Vs. M/s.Commercial Steel Limited in Civil Appeal No.5121 of 2021 (Arising out of SLP (C) No.13639 of 2021 @ D.No.11555 of 2020)*** observed as under:

*"a writ petition can be entertained in exceptional circumstances where there is:*

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation."*

11. Considering the factual matrix, this Court is of the considered opinion that further investigation is going on with reference to the larger



conspiracy. When the investigations are in progress and the presence of the petitioner is stated to be required for further investigation, it is not desirable to grant permission to the petitioner to travel abroad. It is specifically stated that the petitioner has not cooperated with the Investigating Agency and provided all the material facts relating to his company at Hong Kong. Money trails are traced by the Agency and they require further investigation to cull-out the truth and prosecute the offenders.

12. The grounds raised on merits on behalf of the petitioner deserves no consideration, since the investigations are in progress. Thus, such statement made on merits in writ proceedings need not be considered at this stage in a writ proceeding. More so, case under FEMA, 1999 is pending. It is for the Investigating Agency to complete the process of investigation and file a report before the appropriate Court.

13. The non-cooperation of the petitioner to provide informations to the Investigating Agency has been stated by the respondents. In respect of such relief to grant permission to travel abroad, facts of each case is to be considered with reference to the materials available on record. It is not as if



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that the High Court can follow some directions issued in another case for granting permission to a person, who has involved in criminal case under FEMA, 1999. Therefore, the order passed in W.P.No.22098 of 2023 by this Court need not be considered in the present case.

14. At this juncture, in the event of granting permission to the petitioner to travel abroad, the same would hamper further investigation to be conducted by the Agency in the manner known to law. Thus, this Court is not inclined to consider relief as such sought for in the present writ petition.

15. Accordingly, this Writ Petition stands dismissed. No costs.

**02.04.2024**

Jeni  
Index : Yes  
Speaking order  
Neutral Citation : Yes



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To

1. Bureau of Immigration,  
Haddows Road, Thousand Lights West,  
Thousand Lights, Chennai – 600 008.

2. The Deputy Director,  
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Office of the Joint Director,  
Enforcement Directorate, Chennai Zonal Office,  
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**S.M.SUBRAMANIAM, J.**

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