2024:DHC:5748

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

Date of decision: 30th JULY, 2024

IN THE MATTER OF:

\+ **W.P.(CRL) 226/2024**

VISHAL KHULLAR .....Petitioner

Through: Mr. Himanshu Makkar, Adv.

versus

THE STATE (GOVERMENT OF NCT DELHI) .....Respondent

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg and Mr. Ashvini Kumar, Advs.
SI Tinku Shokeen, PS IGI Airport.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No. 104/2019, dated 14.03.2019, registered at Police Station IGI Airport, for offences under Sections 420/468/471 IPC read with Section 12 of the Passports Act.

2. It is the case of the prosecution that during scrutiny of the travel documents of the Petitioner at the boarding gate of the IGI Airport, Delhi, the Schengen Visa sticker affixed on the Passport of the Petitioner herein was detected to be counterfeit by the Air India Security staff. It is stated that the Visa was confirmed to be counterfeit by the Assistant Manager – Security, Investigation and Fraud Prevention Cell, Air India. It is further stated that an e-mail has also been received by the German Embassy of the Federal Republic of Germany confirming that the visa of the Petitioner is

counterfeit. It is stated that the Petitioner was offloaded from the aircraft and the present FIR was registered against the Petitioner. The investigation is going on.

3. It is the case of the Petitioner that the Petitioner was desirous to travel abroad for a family vacation. It is stated that the petitioner is less educated and does not have a good command over English and, therefore, he sought assistance from a travel agent to help him complete the visa process. It is stated that the Petitioner herein contacted one Mr. Amreik Singh, who is a travel agent, through some reference. It is stated that the said Mr. Amreik Singh met the Petitioner at Amritsar in his residence and took Rs. 1,00,000/- from the Petitioner and called the Petitioner to Delhi along with his Passport, Aadhar Card, Photo ID's, Photos, Bank Account Statements etc. It is stated that the Petitioner met Amreik Singh in New Delhi and gave him all required documents along with Rs.1,00,000/-. It is stated that Amreik Singh applied for "the Schengen Visa" for the Petitioner and his wife and his child. It is stated that on 25.01.2019, the Petitioner herein along with his wife and child appeared for the Visa interview in the office of VFS Globla at New Delhi. It is stated that after a few day, the Petitioner was informed by Amreik Singh that his Visa is denied and he suggested the Petitioner to apply for individual Visa at Chennai. It is stated that the agent, Amrik singh, asked the Petitioner to send his documents to one Taufique Rahman, in Kolkata. It is stated that on 04.02.2019, the Petitioner sent his documents to Tausif Rahman. It is stated that upon receipt of the documents, the said Taufique Rahman called the Petitioner and informed him that he will apply for the Visa, and once the Interview date is given, he will call the Petitioner

to Chennai. It is stated that the said Taufique Rahman applied for Visa at Pondicherry, and informed the Petitioner that his Visa interview is on 22.02.2019 in Pondicherry. It is stated that on 18/19.02.2019 Taufique Rahman called the Petitioner and informed him that the place of interview has changed from Pondicherry to Chennai. It is stated that Amreik Singh assured the Petitioner that Gurdeep Singh will meet the Petitioner in Chennai and facilitate the Visa process. It is stated that on 20.02.2019 the Petitioner travelled to Chennai for Visa Interview and met Gurdeep Singh and Taufique Rahman, and they took the Petitioner to a hotel in Chennai. It is stated that in the hotel, the Petitioner was asked to wait in the Reception area. It is stated that Gurdeep Singh and Taufique Rahman took papers from the Petitioner and informed him that his biometric details will be taken from his Aadhaar Card and after some time, he was asked to go home. The Petitioner returned to Jodhpur and was waiting for communication from his agents. It is stated that the Petitioner received WhatsApp video from Amrik Singh showing Visa stamps on his passports. It is stated that on 28.02.2019, the Petitioner paid Rs 4,50,000/- to Amreik Singh for tour package. It is stated that Amriek Singh informed the Petitioner that he will travel via Chennai, and shared tickets of Ethiad Airlines from Chennai to Paris. It is stated that upon reaching Chennai, the Petitioner met Taufique Rahman who gave the Petitioner his passport with the travel visa affixed on it. It is stated that on 29.02.2019, Taufique Rahman informed the Petitioner that his flight to Paris from Chennal has got cancelled and now he will have to travel via Delhi. It is stated that on 14.03.2019, the Petitioner reached the IGI Airport and cleared the immigration, and then, while boarding the flight at the gate, he was stopped and was brought back to the terminal for questioning and was arrested.

4. It is stated by the learned Counsel for the Petitioner that more than five years have passed and the investigation is not concluding and, therefore, on this ground alone, the FIR must be quashed. It is further stated that the Passport Act is a self-contained Act and the offence of providing false information is punishable under Section 12 of the Passport Act and, therefore, there cannot be two parallel proceedings, i.e. one under the IPC and one under the Passports Act, against the Petitioner. It is also the case of the Petitioner that the ingredients for which the offence has been registered are not made out and, therefore, the FIR must be quashed.

5. Status Report has been filed. In the Status Report it is stated that the investigation is going on. The Petitioner was arrested on 15.03.2019 and his disclosure statement has been recorded and on the basis of the disclosure statement of the Petitioner herein Amreik Singh and Taufique Rahman have been interrogated. The investigation also reveals that Taufique Rahman provided the bank account number in which the Petitioner had deposited Rs.4,50,000/-. It is stated that the said bank account belongs to one Mujeeb PP, who is a resident of Malappuram, Kerala. It is stated that a raid was conducted to arrest the said Mujeeb but he was not found at home. It is stated that since Mujeeb has not joined investigation even after issuance of Notice under Section 41A of the Cr.P.C, a LoC has been opened against him. It is further stated in the Status Report that Mujeeb has been arrested only on 16.01.2024 and there are other co-accused who are members of the Cartel and are still at large. The Status Report states that the investigation

would be completed as expeditiously as possible.

6. Heard the Counsels for the Parties and perused the material on record.

7. The parameters of quashing an FIR have been laid down in a number of Judgments given by the Apex Court. In Indian Oil Corpn. v. NEPC India Ltd., **(2006) 6 SCC 736**, the Apex Court, after culling out various judgments on the point of parameters of quashing an FIR, has crystallised the parameters and the same reads as under:

> "*12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:*
>
> ***(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their***

face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from

> ***furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.***" (emphasis supplied)

8. Undoubtedly, inordinate delay in investigation is a ground for quashing the FIR but every delay cannot result in quashing of the FIR. Investigation is an on-going process and the Court has to satisfy itself that steps are being taken by the Investigating Authorities to conclude the investigation. The Apex Court in State of A.P. v. P.V. Pavithran, **(1990) 2 SCC 340,** has observed as under:

> "**7**. *There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.*
>
> ***8**. While so, there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine*

crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed.

***9**. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore, depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused.*

*****

***12**. It follows from the above observations that no general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating agency in completing the investigation, such delay is a ground to quash the FIR."*

9. The facts of the present case indicates that there is a well established cartel which provides fake visa etc. to persons intending to travel abroad. The FIR is of 2019 and one of the co-accused has been arrested as late as 16.01.2024 and that too after a LoC has been opened against him. Certain

other co-accused are still at large and it cannot be said that there is complete inaction on the part of the investigating agency in proceeding ahead with the investigation and, therefore, the present FIR cannot be quashed on the ground of delay.

10. The Petitioner is accused of offence under Section 12 of the Passport Act. Section 12 reads as under:

> "*Section 12. Offences and penalties.*
>
> *(1) Whoever--*
>
> *(a) contravenes the provisions of section 3; or*
>
> *(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or*
>
> *(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or*
>
> *(d) knowingly uses a passport or travel document issued to another person; or*
>
> *(e) knowingly allows another person to use a passport or travel document issued to him,*
> *shall be punishable with imprisonment for a term which may extend to 1 [two years or with fine which may extend to five thousand rupees] or with both.*
>
> *2 [(1A) Whoever, not being a citizen of India,--*

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or
(b) ***holds a forged passport or any travel document****,*

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.]

(2) Whoever abets any offence punishable under 3 [sub-section (1) or sub-section (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.," (emphasis supplied)

11. Petitioner has been found with a fake Schengen Visa, which is a travel document. The ingredients of Section 12 of the Passport Act are satisfied. Petitioner has also been charged with offences under Section 468/471/420 IPC. Sections 468, 471 and 420 IPC reads as under:

"468. Forgery for purpose of cheating.—Whoever

> *commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> *****
>
> *471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].*
>
> ****
>
> *420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

12. All the ingredients of Sections 471/468 IPC are made out in the FIR against the Petitioner. Section 420 IPC is applicable to any person who alters or destroys a valuable security. A Schengen Visa is indeed a valuable security as it gives right to a person to enter a foreign land. The Petitioner is accused of using a forged Schengen Visa to travel to Paris and, therefore, the ingredients of Section 420 IPC are also satisfied.

13. In view of the fact that all the ingredients are satisfied and also in view of the fact that the investigation is going on, this Court, at this juncture,

is not inclined to quash the FIR.

14. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 30, 2024
Rahul