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

Date of decision: 29.01.2024

(14)+ CRL.M.C. 229/2022

(15)+ CRL.M.C. 230/2022

(17)+ CRL.M.C. 237/2022 & CRL.M.A. 954/2022

VIPUL GUPTA

..... Petitioner

VIPUL GUPTA

..... Petitioner

KAVEEN GUPTA

..... Petitioner

Through: Mr.Gurpreet Singh, Mr.Jatin
S.Sethi, Mr.Manit Walia, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr.Aman Usman, APP.
Mr.Bharat Chugh, Mr.Ashok
Kumar, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed challenging the orders dated 19.01.2021 (hereinafter collectively referred to as the 'Impugned Orders') passed by the learned Additional Chief Metropolitan Magistrate (Special Acts), Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No. 288642/2016, Complaint Case No. 522997/2016, and Complaint Case no. 522998/2016, all titled *M/s.VLS Finance Limited v. Sunair Hotels Ltd.*



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2. By the Impugned Orders, while granting relief to the petitioner(s) on an application seeking permission for renewal of the passport for a period of five years as per the then prevailing rules, it has been stipulated by the learned Trial Court that the petitioner(s) shall seek prior permission of the learned Trial Court before leaving the country.

3. The learned counsel for the petitioner(s) submits that the abovementioned Complaint Cases have been filed for the offences that are bailable in nature. He further submits that the Complaint Cases were filed sometime around in the year 2001/2013, but their trial is likely to take a long period of time. He submits that the petitioner(s), for their business and other purposes, have to travel regularly to foreign countries, and the impugned condition imposed, therefore, acts as a hindrance to their personal liberty and the right to carry on trade or business freely.

4. He submits that even earlier, by an order dated 12.04.2013 passed by the learned Additional Sessions Judge-02, New Delhi District, Patiala House Courts, New Delhi in Criminal Revision No. 185/2012 and 186/2012, a similar condition imposed vide order dated 04.03.2010 passed by this Court in Crl. M.C. No.911/2003, was modified, and while setting aside the order dated 19.09.2012 of the learned Trial Court, it was directed that the applicant will intimate the learned Trial Court about the details of his visit subject to placing on record one time FDR of Rs. 5,00,000/- instead of filing FDR on each visit.

5. He submits that thereafter, the petitioner- Mr.Vipul Gupta has



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visited foreign countries more than 30 times, while the petitioner-Mr.Kaveen Gupta has travelled to foreign countries more than 26 times. He submits that, in fact, after the passing of the Impugned Order, the petitioner(s) have travelled abroad more than 5 times, and there are no complaints of the petitioners having, in any manner, abused the permission granted by the learned Trial Court.

6. He submits that in terms of the first order granting permission to the petitioner(s) to travel abroad, both the petitioners have deposited Rs.10 lacs each as fixed deposit receipts with the learned Trial Court, which remains deposited with the learned Trial Court as a security of the petitioner(s) coming back to this Country.

7. On the other hand, the learned counsel for the respondent no.2/complainant submits that the present petitions are barred by delay and laches. He submits that though the Impugned Order was passed on 19.01.2021, the present petitions have been filed only on or around 07.01.2022, that is, with a delay of almost a year. Placing reliance on the judgments of this Court dated 24.08.2011 in CrI. M.C.1656/2011, titled **Rajesh Chetwal v. State**, and of the Orrisa High Court in **Bata @ Batakrushna Behera & Ors. v. Anama Behera**, 1989 SCC OnLine Ori 325, he submits that, therefore, the present petitions are liable to be dismissed on this ground alone.

8. He further submits that the petitioners have also taken benefit of the Impugned Orders inasmuch as they have sought for and have been granted permission to travel abroad in terms of the orders impugned herein. He submits that the petitioner(s), therefore, cannot maintain the present petitions challenging the said orders, of whose benefit they



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have already availed.

9. He further submits that apart from the present Complaint Cases, there are other criminal cases which are also pending against the petitioner(s). He submits that the petitioner(s) are also being prosecuted by the Serious Fraud Investigating Office (SFIO). He submits that the Arbitral Award of more than Rs.400 crore has also been passed against the petitioner(s) for which appropriate action is pending against them. He submits that therefore, the petitioner(s) should not be granted as *en bloc* permission to travel abroad as they may abscond from the process of the Court.

10. He further submits that the petitioner- Mr.Kaveen Gupta is a Green Card Holder of the United States of America and owns properties there and, therefore, there is a likelihood that he will abscond from the jurisdiction of the Indian Courts in case the condition imposed by the learned Trial Court is waived.

11. Placing reliance on the judgment of the Allahabad High Court in ***Ravindra Nath Bhargav v. State of U.P.*** 2019 SCC OnLine All 3698; the Gujarat High Court in ***Patel Ashokbhai Girdharbhai v. Regional Passport Officer***, 2018 SCC OnLine Guj. 2409; the Karnataka High Court in ***Pradeep NRJ v. UOI & Ors.***, MANU/KA/4569/2018, and ***Kasturi Rajupeta v. UOI & Ors.*** MANU/KA/1108/2022, he submits that even though the offence for which the petitioners are prosecuted are bailable in nature, the learned Trial Court can impose the condition impugned herein while granting permission to the petitioner(s) to renew their passport(s).

12. I have considered the submissions made by the learned counsels



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for the parties.

13. As held by the Supreme Court in *Menka Gandhi v. Union of India*, (1978) 1 SCC 248, right to travel abroad is a part of the personal liberty guaranteed under Article 21 of the Constitution of India. Though it can be curtailed in accordance with a procedure established by law, in the present case, as has been contended by the learned counsel for the petitioner(s), pursuant to the above referred order dated 12.04.2013, the petitioner(s) have travelled abroad more than 30/26 times. Even pursuant to the Impugned Order, they have travelled abroad on at least 5 occasions. There is no allegation that the petitioner(s) have, in any manner, violated the terms of the permission granted to them earlier. The trial in the above complaint cases is also pending since 2001/2013 and is not likely to conclude very soon. These were relevant factors to be considered by the learned Trial Court while passing the impugned order.

14. I also find that the learned Trial Court has not given any reason for imposing the impugned condition on the petitioner(s). An order that infringes the rights and personal liberty of the petitioner(s) cannot be passed in such a casual manner.

15. As far as the other proceedings against the petitioner(s) are concerned, as they are not before this Court, this Court refrains from making any comment on them. Needless to emphasise, the present order shall govern only the Complaint Cases that are the subject matter of the impugned orders and consequently the present petitions.

16. As far as the objection of the learned counsel for the respondent that there is delay and laches on part of the petitioner(s) to approach



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this Court, I again do not find any merit. Delay and latches of the petitioner(s) is one of the considerations that weighs with the Court while considering a petition that seeks to invoke its discretionary jurisdiction. The same is not a bar on the maintainability of the petition. In the present case, as I find that the impugned order infringed on the fundamental rights of the petitioner(s) and was unreasoned, therefore, the petition cannot be dismissed only on the ground of delay and latches.

17. Similarly, in the facts of the present case, only because the petitioner(s) have approached the learned Trial Court seeking its permission to travel abroad in terms of the impugned orders, the petitioners cannot be said to have acquiescence in the said order or lost its right to challenge the same.

18. Keeping in view of the above circumstances, the present petitions are allowed. The impugned orders are set aside.

19. On the condition that the petitioner(s) keep the fixed deposit of Rs.10 lakhs each deposited with the learned Trial Court, and that they duly inform the learned Trial Court of their travel plans at least two weeks in advance of their travel abroad, and on their return, inform the learned Trial Court of their return, the condition imposed on the petitioner(s) for seeking prior permission of the learned Trial Court to travel abroad is set aside.

20. It is further made clear that if subsequently any occasion arises for the learned Trial Court to re-impose the said condition, the learned Trial Court shall be free to re-impose the same for the reasons to be recorded.



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21. The petitions along with the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

JANUARY 29, 2024/Arya/AS

Click here to check corrigendum, if any

Signature Not Verified

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