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

+ CRL.M.C. 1617/2022

GAURAV GUPTA

.....Petitioner

Through: Ms. Anjali Jha Manish and
Mr. Jatin Kumar Gaur,
Advs.

versus

COMMISSIONER OF CGST

.....Respondent

Through: Mr. Satish Aggarwala, Sr.
Standing Counsel

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.10.2024

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1. The petitioner is essentially aggrieved by the condition imposed on the petitioner while granting bail. By the order dated 12.12.2019, the petitioner was admitted on bail in an investigation carried out by the respondent Department alleging that the petitioner was operating bogus and non-existing firms and had allegedly created fake invoices/inadmissible Input Tax Credit of Rs. 1,43,37,89,138/-.

2. One of the conditions imposed on the petitioner was that he shall not leave the country without prior permission of the Court. A further condition was thereafter imposed *vide* order dated 03.03.2020 that the petitioner shall surrender his passport on his return from abroad.

3. The learned counsel for the petitioner submits that the bail was granted *vide* order dated 12.12.2019. She submits that the petitioner is engaged in import and export of articles and he is frequently required to visit abroad. It is submitted that the



petitioner, since the passing of the order of bail, has travelled to various countries on six occasions and admittedly has not misused the liberty and has come back as per the itinerary given to the Court.

4. She further submits that it is an admitted case of the prosecution that the investigation is incomplete which has led to the filing of the complaint before the concerned Court.

5. Considering that the petitioner was arrested on 25.11.2019 at the initial stage of investigation and was admitted on bail *vide* order dated 12.12.2019, the learned Trial Court rightly put the condition that the petitioner shall not leave the country without prior permission of the Court since that could have hampered the further investigation. However, five years have been taken by the Department to complete the investigation which has led to filing of the complaint now in the year 2024.

6. It is also not disputed that the petitioner has at least travelled on six occasions after taking permission to travel to various countries abroad and has on every occasion come back to India. It is not the case of the respondent that the petitioner has not cooperated with the investigation. The record indicates that the permission was granted to the petitioner to travel abroad noting the business requirements of the petitioner.

7. It is undisputed that the right to travel abroad is a fundamental right and cannot be curtailed in a casual manner. Even though the Courts are empowered to put an appropriate condition so as to ensure the presence of the petitioner during the course of trial, however, the petitioner has already shown his *bona fide* by not misusing the liberty and has always come back by taking the permission to travel abroad.

8. This Court is of the opinion that continuing with such



condition would be onerous. In regard to the impounding of passport, the Hon'ble Apex Court in ***Suresh Nanda v. CBI : (2008) 3 SCC 674*** observed as under:

“18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a “passport” is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edn., p. 133). This principle is expressed in the maxim generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing.”

9. In view of the above, the present petition is allowed and the condition imposed by the learned Trial Court to the extent that the petitioner would need permission of the learned Trial Court is set aside.

10. It is also directed that the petitioner is not required to surrender his passport. However, an additional condition is imposed upon the petitioner that he is required to inform the concerned Court every time he travels abroad by filing an affidavit in the concerned Court about his itinerary and disclosing his place of residence during the period of travel.

11. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 23, 2024

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