



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 12/2023

Ashutosh Bajoria S/o Late Shri Shrigopal Bajoria, Aged About 45 Years, Managing Director Of M/s Agribiotech Industries Ltd., Resident Of Plot No. 404, Nemi Sagar Colony, Vaishali Nagar, Jaipur, Rajasthan.

-----Petitioner

Versus

Rajesh Kumar Sharma, Assistant Director, Directorate Of Enforcement, 2nd Floor, Jeevan Nidhi-II, L.I.C. Building, Bhawani Singh Road, Jaipur - 302005. Through Standing Counsel For The Union Of India.

-----Complainant / Respondent

For Petitioner(s) : Mr. A.K. Gupta, Sr. Advocate with
Ms. Savita Nathawat
Mr. Ashutosh Bhatia
Mr. Sourabh Pratap Singh Chouhan
Mr. Anoop Meena and
Mr. Gaurav Sharma

For Respondent(s) : Mr. Anand Sharma
Mr. Akshay Bhardwaj, for
Mr. R.D. Rastogi, ASG

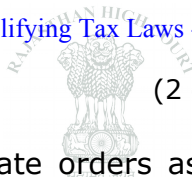
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 04/01/2023
Pronounced on : 06/01/2023

ORDER

(1) By way of present petition filed under Section 482 Cr.P.C. of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner has approached this court with the following prayer :-

"It is, therefore, most respectfully prayed that, in view of the above mentioned facts and circumstances and in the interest of justice, this Hon'ble Court may be pleased to accept and allow the present petition and quash and set aside the order dated 22.12.2022 and consequently permit Petitioner may be given permission to travel Singapore for ten days from 04.01.2023 upto 14.01.2023 and Dubai from 15.01.2023 upto 19.01.2023 on any condition that may be imposed by this Hon'ble Court.



Any other appropriate orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

(2) Facts in brief of the case are that Assistant Director, Directorate of Enforcement filed criminal complaint No. 3/2021 against the petitioner and other co-accused for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short 'the Act of 2002') before the Special Court (PMLA, 2002) Special Judge (CBI Cases) No. 3, Jaipur Metropolitan-I (for short 'the Trial Court') wherein cognizance was taken against the petitioner and co-accused for the above offences vide order dated 12.07.2021 and arrest warrants were issued against them. The arrest warrants were received back unserved with the report of Head Constable that out of fear of arrest, the petitioner has absconded. After receipt of the above report, the Trial Court issued standing arrest warrants against the petitioner and notice under Sections 82, 83 Cr.P.C. were also issued for appearance of the petitioner vide order dated 08.09.2021. Thereafter the petitioner submitted an application under Section 70(2) read with Section 71 Cr.P.C. for converting the arrest warrants into bailable warrant. However, the said application was rejected by the Trial Court vide order dated 15.02.2022.

(3) Feeling aggrieved by the order dated 15.02.2022, the petitioner submitted S.B. Criminal Misc. Petition No. 5350/2022 before this court and on 17.06.2022 the coordinate bench of this court passed the following order :-

"Learned counsel for petitioners submits that the trial court vide order dated 12.07.2021 took cognizance for the offences under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 and issued



arrest warrant against petitioners. He further submits that the trial court has not given any reasons and circumstances for issuance of arrest warrant whereas petitioners are not absconding rather ready to appear before the trial court and submit their bail bonds.

Petitioners moved an application under Section 70(2) of Cr.P.C. to convert non-bailable warrant into bailable warrants but vide order dated 15.02.2022 same has also been dismissed.

The Hon'ble Supreme Court in case of **Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors. Reported in [(2007) 12 SCC 1]** has opined that the non-bailable warrant to summon the accused persons should not be issued without proper scrutiny of facts and complete application of mind.

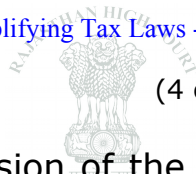
Issue notice to respondents of petitions as well as stay applications.

In the meanwhile, order dated 12.07.2021 to the extent of issuing arrest warrants against petitioners shall remain stayed and petitioners shall not be arrested. However, petitioners are at liberty to appear before the trial court and submit their bail bonds."

(4) In pursuance of the above order dated 17.06.2022 the petitioner appeared before the Trial Court and furnished bail and surety bonds on 23.06.2022. His bail bonds were attested and the petitioner was released on bail subject to the condition that he will not leave India without prior permission of the court.

(5) The petitioner submitted an application before the Trial Court and sought permission to travel to Singapore and Dubai to attend business meetings with effect from 01.01.2023 to 15.01.2023. However, the said application was rejected by the Trial Court vide impugned order dated 22.12.2022 by holding that no relevant documents have been submitted on the record. Hence the permission to go to Singapore and Dubai, was declined.

(6) Learned counsel for the petitioner submitted that presence of the petitioner is required at Singapore and Dubai for business meetings. He submits that Dani Essentials Home Culture Company, Singapore has written the following letter dated



27.12.2022 to the Commission of the Republic of Singapore, New Delhi stating herein that :-

"The High Commission of the Republic of Singapore
E-6 Chandragupta Marg, Chanakyapuri, New Delhi
Delhi-110021
India

Attn: Visa Section – the Office in Charge

Dear Sir / Madam,

Re: Visa application for Mr Ashutosh Bajoria Holder of Indian Passport No: Z5540579.

With reference to the above visa application we would like to certify and confirm that we have known Mr Ashutosh Bajoria for many years and would like to invite him to visit Singapore for business meetings. The meetings have been fixed from 2nd January 2023 till 6th January 2023.

We kindly request you to grant him a short term stay multiple visa to facilitate his travel plans from India to Singapore at any given time when required to do so.

We kindly request you to grant him a short term stay multiple visa to facilitate his travel plans from India to Singapore for his stay, maintenance and repatriation if required.

If you require any further details please do not hesitate to contact me at my mobile number +65 9671 2022.

Thank You for your kind attention and assistance rendered to him.

Yours Sincerely
For DANI ESSENTIALS"

(7) Learned counsel submits that similarly a letter being addressed by Mr. Syed Mohammed Rafey Ghani to the High Commission of United Arab Emirates, New Delhi on 27.12.2022 stating herein that :-

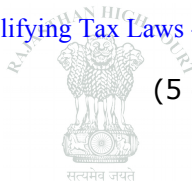
"The High Commission of the United Arab Emirates, New Delhi

Attn: Visa Section – the Office in Charge

Dear Sir / Madam,

Re: Visa application for Mr Ashutosh Bajoria holder of Indian Passport No: Z 5540579.

With reference to the above visa application we would like to certify and confirm that we have known Mr Ashutosh Bajoria for many years and would like to invite him to visit Dubai for business meeting.



We kindly request you to grant him a short term stay multiple visa to facilitate his travel plans from India to Dubai at any given time when required to do so. We guarantee his return by having sufficient funds and confirmed tickets if necessary we undertake to be responsible for his stay, maintenance and repatriation if required. If you require any further details please do not hesitate to contact me at my mobile number +971 564652679.

Thank You for your kind attention and assistance rendered to him.

Yours Sincerely

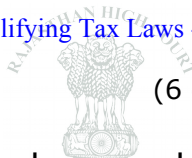
Syed Mohammed Rafay Ghani”



(8) Counsel submits that the petitioner has a right to go aboard and he cannot be deprived of his right except in accordance with the procedure prescribed by the law. In submission of his contentions, he placed reliance on the judgment of Hon'ble Apex Court in the case of Smt. Maneka Gandhi v. Union of India & Anr reported in AIR 1978 SC 597 and Satish Chandra Verma v. Union of India & Ors, [Civil Appeal No. 3802/2019 decided on 09.04.2019].

(9) Counsel submits that appropriate condition can be imposed to ensure presence of the petitioner before the Trial Court. Counsel submits that the petitioner is a permanent resident of Jaipur and his entire family resides in Jaipur and the factory, home and properties of the petitioner are also within the jurisdiction of the Trial Court.

(10) Lastly, counsel submitted that the petitioner may be given permission to travel to Singapore with effect from 04.01.2023 to 14.01.2023 and Dubai from 15.01.2023 to 19.01.2023.

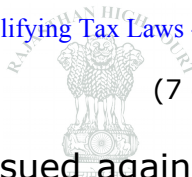


(11) Per contra, learned counsel for the respondent opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner remained absconded and standing arrest warrants were issued against him. Counsel submits that once permission is granted to the petitioner, he is not likely to return. Counsel submits that mentioning incorrect facts before the coordinate bench the petitioner got the interim order dated 17.06.2022 in S.B. Criminal Misc. Petition No. 5350/2022.

(12) Counsel submits that an application has been submitted for recalling of the order dated 17.06.2022. He submits that no documents were submitted before the Trial Court by the petitioner regarding his business meetings at Singapore and Dubai. Counsel submits that now for the first time the two letters dated 27.12.2022 have been submitted on record to seek permission to travel abroad. Counsel submits that the Trial Court has rightly rejected the application of petitioner after relying upon the judgment of Hon'ble Apex Court in the case of Barun Chandra Thakur v. Ryan Augustin Pinto [Criminal Appeal No. 1618/2019, decided on 21.10.2019]. Counsel submits that under these circumstances, the petitioner is not entitled to get permission to go abroad.

(13) Heard and considered the rival submissions made at the Bar and perused the material available on record.

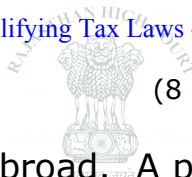
(14) Perusal of the record indicates that the cognizance was taken against the petitioner and co-accused for the offence under Sections 3 and 4 of the Act of 2002 by the Trial Court order dated 12.07.2021 on complaint no. 3/2021 filed by the respondent and



the arrest warrants were issued against the petitioner. When the arrest warrants were not served upon him, standing arrest warrants were issued against him and proceedings under Sections 82 and 83 of Cr.P.C. were initiated vide order dated 08.09.2021. Thereafter the petitioner submitted an application under Sections 70(2) and 71 Cr.P.C. before the Trial Court for converting his arrest warrants into bailable warrant and for releasing him on bail, but the said application was rejected vide order dated 15.02.2022. The petitioner assailed the said order before this court and an interim order was passed on 17.06.2022 granting liberty to the petitioner to submit his bail bonds before the Trial Court and accordingly the petitioner furnished his bail bonds before the Trial Court and he was released on bail on 23.06.2022 but a condition was imposed by the Trial Court that he would not leave India without permission of the court.

(15) Now the petitioner has submitted the application before the Trial Court seeking permission to go to Singapore with effect from 04.01.2023 to 14.01.2023 and Dubai from 15.01.2023 to 19.01.2023 to attend business meetings. The said application has been rejected by the Trial Court by saying that no documents in this regard has been placed on record. However, now the petitioner has placed on record the two letters dated 27.12.2022 which indicate that the presence of the petitioner is required for the business meetings at Singapore and Dubai respectively.

(16) Hon'ble Apex Court in the case of Smt. Maneka Gandhi (supra) has held that the expression "personal liberty" under Article 21 of the Constitution of India has a wider amplitude,



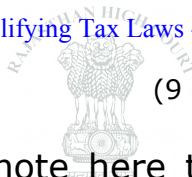
which includes right to go abroad. A person cannot be deprived to this right except in accordance with the procedure prescribed by the law.

(17) Similarly in the case of Satish Chandra Verma (supra), the Hon'ble Supreme Court has held that :-

"The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage; family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right (see: Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248. In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357US 116 which are as follows:

"Freedom to go abroad has much social value and represents the basic human right of great significance.""

(18) This court is required to draw a balance between the right of the petitioner to travel abroad and also the right of the prosecution to duly prosecute the petitioner so as to prevent him from evading the trial. From perusal of the various judgments passed by the Hon'ble Apex Court it is clear that the paramount consideration is given to the condition imposed upon the persons who have been granted permission to go abroad, so as to ensure that they do not flee from justice. For ensuring the presence of the accused before the Trial Court, any appropriate condition can be imposed and in case the condition imposed by law is violated, appropriate coercive action can be taken. The judgment cited by the counsel for the respondent in the case of Barun Chandra Thakur (supra), is not applicable in the facts and circumstances of this case.



(19) It is worthy to note here that at the time of seeking permission before the Trial Court, the petitioner made a prayer in the application (Annexure-5) that the petitioner be allowed to travel abroad for which he is ready and willing to furnish heavy sureties, bank guarantees or fixed deposit.

(20) In view of the above discussion, the impugned order dated 22.12.2022 is quashed. The petitioner is granted permission to travel to Singapore and Dubai till 19.01.2023 on the following conditions that :-

(i) *He will return to India on or before 20.01.2023 and he will furnish adequate surety and bank guarantee of Rs. 25 lakh to the satisfaction of the Trial Court for ensuring his return from abroad and appearance before the court.*

(ii) *The petitioner will put appearance before the Trial Court on his return to India.*

(iii) *The petitioner shall not visit any other country except Singapore and Dubai, for which permission to travel abroad has been granted by this court.*

(iv) *The petitioner will carry his mobile with an active mobile number, which he will provide through his counsel to the Trial Court after reaching Singapore and Dubai respectively, and he will keep the phone activated for international calls and he will also remain available on whatsapp application with an active internet connection.*

(21) It is made clear that after return to India and on submission of an application by the petitioner, the Trial Court shall



release the bank guarantee. It is further made clear that if the petitioner does not comply with the conditions imposed by this court, the bank guarantee shall be forfeited without any notice and the same shall rest with the Central Government. It is further made clear that in case the petitioner does not return to India within time granted by this court, the Trial Court shall be at liberty to proceed against the petitioner in accordance with law.

(22) The petition is disposed of in the abovesaid terms.

(23) Stay application and all pending applications (if any), also stand disposed of.

(ANOOP KUMAR DHAND), J.

db/l