

IN THE COURT OF SH. SHAILENDNER MALIK, SPECIAL JUDGE (P.C. ACT), CBI, ROOM NO.407, ROUSE AVENUE DISTRICT COURT, NEW DELHI

DoE Vs. Sanjay Bhandari & Ors.
ECIR No.HQ/03/2017

ORDER

1. This order would dispose of applications moved on behalf of applicant Mr.Robert Vadra seeking permission to travel abroad. It is matter of record that earlier an application was moved by the applicant with the prayer for travelling to England for his medical treatment/consultation. It is stated in the application that accused/applicant was granted anticipatory bail by ld. Predecessor vide order dated 01.04.2019 under which one of the conditions was that accused/applicant would not leave India without permission from the court. It is stated that applicant has earlier been granted permission to travel abroad on four occasions and on each of those occasions applicant has complied with the conditions imposed by the court.

2. It is stated in application that since applicant stated has medical difficulty of severe back ache and knee generation, therefore for medica consultation/treatment he had visited abroad on earlier occasion after taking permission from the court. It is stated that vide order dated 03.06.2019 applicant was granted permission to travel USA and Netherlands for medical treatment of thrombosis. Thereafter again by order dated 13.09.2019 applicant was granted permission to travel Spain for business purposes and vide order dated 09.12.2019 applicant was again permitted to travel abroad/Spain for medical treatment and business purposes. Further by order dated 03.03.2020 applicant was permitted to travel Spain and France for medical treatment and business purposes.

3. It is stated that presently due to spread of Covid-19 pandemic applicant cannot visit to Spain and there is a large spread of Covid-19 pandemic in USA and other parts of Europe, therefore initially the applicant sought permission for travelling to England for taking medical treatment/consultation. The application was accompanied with Medical documents and copies of exchange of mail of Doctor in UK for taking appointment of Doctor in that country.

4. In the reply to that application filed by the ED objections were taken that the co-accused in the present case namely Sanjay Bhandari who has been absconding, has fled to UK, regarding whom, extradition proceedings have already been initiated and he was arrested by UK authorities and was released on bail till pendency of extradition proceedings. It is further stated that certain properties purchased by alleged proceeds of crime are also in UK and ED has already issued LRs for collecting evidence and investigation is going on and certain witnesses are also in UK. Therefore ED opposed the application for visit of applicant to UK .

5. During the course of arguments, in the wake of objection so raised by Directorate, after taking instructions from his client, Id. Senior Counsel for the accused/applicant moved another application for modification in the prayer, stating therein that in order to show bona fide, applicant made modified prayer to seek permission to travel USA and Turkey instead of going to UK, in the light of objections raised on behalf of the agency though not conceding to those objections.

6. Enforcement Directorate has filed the response for such application seeking for modification of prayer, taking objection that application with modified prayer for permission to travel to USA and Turkey is without any justifiable reason and medical documents, clearly showing that in fact intended purpose to visit abroad is not medical grounds. It is further stated that there is no document showing any appointment of any Doctor of USA/Turkey, as such ED had not got any document

to verify the authenticity of the grounds for which modified prayer has been made for visiting USA and Turkey.

I have heard the arguments through VC.

7. Ld. Senior Counsel Sh. K.T.S. Tulsi submitted on behalf of the applicant that applicant has already been granted permission to travel abroad for his medical treatment/consultation as well as for his business purposes on four occasions. He submitted while referring to the orders dated 03.06.2019, 13.09.2019, 09.12.2019 and 03.03.2020 that on each of the occasion whatever conditions were imposed by the court were duly complied with by the applicant. Moreover he submitted that the court has taken into consideration all apprehensions raised on behalf of ED. He further submitted that rather after registration of ECIR when the office of the applicant was raided, applicant was in UK and came back to India and joined the investigation. He submitted that there has never been any instance of non-cooperation with the agency by the applicant or non-compliance of any of the conditions imposed upon him. Ld. Senior Counsel has also relied upon judgment of Apex Court in **Rajbhushan Omprakash Dixit vs. Union of India** TC (Cr1) 3/2018 arising out of WPCRL No..3632018 decided on 18.05.2018, order of Apex Court in **Satish Chandra Verma Vs. Union of India and others** Civil Appeal No.3802/2019, arising out of SLP (Civil) No.1655/2019 decided on 09.04.2019 and order of High Court of Delhi in **Bina K. Ramani Vs. State** MANU/DE/0387/2010 and submitted that right to travel abroad has been considered one of the basic right under the fundamental right of life and personal liberty. He further submitted that applicant has not been named as accused in the complaint filed in court. He further submitted in the present case applicant is seeking permission to travel abroad for medical treatment and consultation in view of his medical difficulties.

8. Ld. Counsel Sh.N.K. Matta appearing on behalf of Enforcement Directorate has submitted that application is absolutely without any cogent medical documents to show that there was any necessity for the applicant to visit UK or even USA or Turkey for the purpose of medical treatment. He further submitted that application is only a misuse of process. He submitted that even if earlier permission was granted to applicant to travel abroad, does not ipso facto make out a case for unfettered right to the applicant to travel abroad. He further submitted that investigation in the matter is still going on qua applicant and all the relevant facts in this regard have already been mentioned in Page 103 of the complaint filed by the agency. He submitted that LRs have been issued to UK agencies for collecting necessary evidence. As such the agency has all the apprehension of applicant fleeing away from the process of law or to tamper with the evidence if visited to UK. Regarding modified prayer for permission to travel to USA/Turkey, he submitted that such prayer is without any medical documentary evidence showing any appointment etc. Counsel for ED relied upon judgment of Apex Court in **Manoj Kumar Babu Lal Punamiya vs. State of Jharkhand through Directorate of Enforcement** Cr.M.P. No.5764/2014 decided on 01.09.2014

9. During the course of arguments ld. Senior Counsel for the applicant has submitted in the official e-mail ID of the court showing mail sent for taking appointment of Doctor in USA. Ld. Senior Counsel for the applicant submitted that proper appointment from the Doctor in USA or alternatively in Turkey can be taken by the applicant when there would be a permission from the court of law for travelling to those countries. Therefore there is no specific date of appointment from the Doctor of those countries.

10. Having considered rival submissions and having gone through previous orders by which applicant was permitted to travel abroad, it is evident from the

application with modified prayer that applicant intends to travel to USA/Turkey for appropriate medical advice/treatment from there. Earlier prayer of applicant for permission to visit UK , was modified in light of objection raised by ED. Regarding visit to USA /Turkey, Ld. Senior Counsel has filed today exchange of mail of the applicant with the Doctor in USA, for taking appointment in USA. Medical record of applicant has already been annexed with the application showing that the applicant has been suffering from back ache and knee generation. In this regard earlier also applicant has been permitted to travel to visit USA for his medical advice/ treatment. Earlier he had also taken medical consultation/treatment from Spain. On each of the occasions whenever applicant has been granted permission to travel abroad, certain conditions were laid down which were duly complied with. With regard to objection of ED regarding visit to UK, such prayer has been modified by the applicant for taking treatment/consultation in USA or alternatively to Turkey. Therefore in such circumstances taking note of the fact that on earlier occasions applicant has been granted permission to travel abroad. Right to travel abroad of an accused in a matter either under investigation, under trial or even for a convict has been recognized by different orders of Hon'ble Supreme Court and High Court. No doubt such right to travel abroad is not an absolute right and more specifically in cases of financial irregularities one like PML Act of 2002, therefore such permission if at all to be given can be given with certain conditions so as to strike a balance of individual's right as well as apprehension of the investigating agency regarding misusing of liberty or interference in the investigation. Even in the order of Apex Court relied upon by Ld. Counsel for ED accused was granted permission to travel abroad for medical treatment in Singapore with conditions.

11. Therefore, accused/applicant is granted permission to travel USA or alternatively to Turkey for a period of eight weeks from the date of leaving India, subject to following conditions :-

(i) Applicant would submit in the form of an affidavit in the court before leaving India details of the Doctor with whom he would take the appointment for his medical treatment in USA / Turkey. Applicant would also submit the details of address of his stay at abroad with telephone/contact number.

(ii) Applicant shall furnish additional FDR/Bank Guarantee for a sum of Rs.25,00,000/- in his name.

(iii) Applicant would not open or close any bank account and applicant would not enter into any kind of property transaction abroad.

(iv) Applicant shall inform the Court about his arrival in India within 24 hours.

(v) Applicant would not tamper with evidence nor try to influence any witness in any manner and shall not use the permission granted to him contrary to the rules.

(vi) Applicant shall join the investigation within 72 hours of so informed by the IO.

(viii) This permission shall be subject to other applicable rules and will not be deemed as permission to any other authority except the permission from the side of the court.

(ix) Applicant shall file the copy of his passport along with copy of his Visa in the court, on his return.

(x) In case any of the conditions are violated the bank guarantee/FDR will be forfeited to the State.

12. It is needless to mention that the applicant would strictly follow the guidelines and protocol of Indian authorities, WHO and the local authorities wherever he would visit regarding Covid-19 pandemic.

13. Application accordingly disposed off.

14. LOC if any issued against the applicant shall remain suspended/withdrawn during that period. Copy of the order be sent to FRRO, East Block, Level-7, R.K. Puram, New Delhi. Copy of the order be also given in e-form to ld. counsel for the applicant and ld. counsel for ED.

Announced on 24.09.2020

(Shailender Malik)
Special Judge (PC Act), CBI
Rouse Avenue Courts, New Delhi