

(2014) 03 CAL CK 0039
In the Calcutta High Court
Case No : C.R.R. No. 448 of 2014

Central Bureau of Investigation, Anti Corruption Branch

APPELLANT

Vs

Sudipta Ghosh

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 166A, 211, 239
Passports Act, 1967 — Section 10(3)(e)
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 10, 12, 13 (1)(d), 13(1)(a), 13(2)

Citation : (2014) 4 CHN 265

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Himanshu Dey and Mrityunjay Chatterjee, Advocates for the Appellant; Aninda Lahiri, Prajnadeep Roy and Pushpal Chakraborty, Advocates for the Respondent

Judgement

Subrata Talukdar, J.—This Criminal Revisional Application No. C.R.R. No. 448 of 2014 has been filed by the Central Bureau of Investigation, Anti Corruption Branch, Kolkata (for short CBI) as petitioner impugning the Order dated 10.12.2013 passed by the Learned 3rd Special CBI Court, Calcutta in Special Case No. 17/2010 arising out of CBI/S.P.E./A.C.B./Kolkata case No. RC0102009A0018 dated 17th May, 2009 under Sections 120B IPC, 7, 8, 10, 12, 13(2) read with sections 13(1)(a), 13 (1)(d) and 14 of the Prevention of Corruption Act, 1988 (for short the PC Act). By the Order impugned No. 134 dated 10th December, 2013 the Special CBI Court allowed the application of the petitioner to travel abroad. While allowing such prayer of the opposite party to travel abroad by relaxing the condition imposed at the time of granting bail the Court, inter alia, also observed that the investigation of the case has ended in a charge-sheet and the case is fixed for hearing of petition under section 239 Cr.P.C.

2. The Learned Special CBI Court (for short hereinafter referred to as the Ld.

Special Court or the Ld. CBI Court) further observed that "there is a very remote chance" for initiation of trial "very soon." Having regard to the fact that the accused-opposite party was granted bail with a condition not to leave India without the prior permission of the Court and the further fact that several other accused persons of the case had availed permission of the Court for travelling abroad and there is no adverse report against such persons, the Ld. CBI Court relaxed the condition at the time of granting bail by allowing the opposite party to travel to USA for one month.

3. While granting such permission the Ld. CBI Court directed that the opposite party must inform his itinerary and his contact numbers to the Court as well as to the Investigating Officer and shall remain personally present on the date fixed by the Court. The opposite party-accused No. 1 was further directed to furnish a bond of rupees 10 lacs.

4. While directing the passport authority to release the passport of the opposite party, the Ld. CBI Court took notice of the Order dated 6th August, 2013 passed by an Hon'ble Single Bench of this Court in WP No. 5919 (W of 2013) in which the opposite party was the petitioner and the Union of India and the CBI were arrayed as the respondents.

5. Sri Dey in support of CRR 448 of 2014 challenging the said Order of the Ld. CBI Court dated 10th December, 2013 emphatically submits that having regard to the gravity of the case and the urgency in concluding the trial of the same which is pending for a long time, the Order of the Learned Special CBI Court allowing the opposite party, who is the principal accused, to travel abroad at this stage shall further delay the trial.

6. Sri Dey submits that the said case No. RC0102009A0018 dated 17th May, 2009 was registered against the petitioner in view of the huge illegal gratification alleged to have been obtained by him while posted as Director General of Ordnance factories and Chairman of Ordnance Factory Board, Kolkata. Sri Dey submits and such submission is borne out from the pleadings of C.R.R. No. 448 of 2014 that the opposite party entered into a criminal conspiracy with one Sri Ashish Bose of Delhi to obtain huge illegal gratification in respect of sensitive supply orders by the Ordnance Factory Board in favour of manufacturers/suppliers, including foreign suppliers. Sri Dey points out that the total amount of alleged illegal gratification obtained by the opposite party during the said period runs into crores of rupees.

7. Sri Dey further submits that the case is pending trial before the Ld. CBI Court and is at the stage of consideration of charge. From the pleadings at paragraph 8 of the revisional application it transpires that the date was fixed on 3rd March, 2014 for hearing of the discharge application filed by the opposite party and other accused. At paragraph 9 of the said revisional application it is pleaded that Letter Rogatory (letter of request) under section 166A of the Cr.P.C. has been issued by the Learned Special Court, Calcutta to the Central Authority in the

Republic of Singapore for collection of further corroborative evidence pertaining to the deposit of illegal gratification to the tune of US \$10,000 in the Bank account No. 38020632 held by the opposite party with RBS Scoutts Bank Ltd., Singapore in the name of M/s. Mandula Development Inc. Sri Dey asserts that the transfer of funds from the said account is still pending execution and if the opposite party is now permitted to travel abroad there is every chance that he will misuse his liberty and tamper with the evidence. It is further submitted by him that the opposite party is required for the purpose of trial in two other related cases under the PC Act being Special Case No. 21/2010 and 19/2011 arising out of RC0102009A0020 and RC0102009A0030 respectively.

8. Sri Dey submits that it has been specifically averred in C.R.R. No. 448 of 2014 that Special Case No. 19/2010 relates to possession of disproportionate assets. In Case No. 17/2010 a Letter Rogatory has been issued to Singapore for collection of further evidence which is pending execution. Therefore, he submits, if at this stage the opposite party is allowed to travel abroad there is every apprehension that he shall tamper with evidence.

9. He draws the attention of this Court to paragraph 10 of the criminal revisional application in which it is pleaded that the present opposite party filed an application before the Learned Trial Court in November, 2011 seeking the return of his passport and permission to travel to USA which was rejected by the Learned Special Court by Order dated 29th December, 2011. Challenging the said Order the opposite party preferred a criminal revisional miscellaneous application No. 1689/2012 before the Hon'ble High Court praying for relaxation of condition of bail. The said application being CRM No. 1689 of 2012 was disposed of by the Hon'ble Court without granting any relief.

10. In the aforesaid circumstances Sri Dey submits that the opposite party ought not to have been granted the privilege of travelling abroad. The Learned Counsel submits that the next date for hearing of the case before the Learned Special Court is fixed for hearing the discharge application filed by the opposite party. Thereafter the Learned Special Court is entitled to proceed further by fixing a date for framing of charge. The aforementioned dates are crucial for the trial to commence and, if at this juncture the opposite party is allowed to travel abroad then the trial will be irretrievably delayed besides the possibility of the opposite party tampering with the evidence and avoiding appearance in the trial.

11. Sri Dey assails the Order of the Learned Special Court also on the ground that the Learned Special Court did not consider the adequacy of the guarantee furnished by the opposite party for permission to travel abroad. According to Sri Dey, the opposite party, being an influential person who allegedly took illegal gratification from foreign arms suppliers should be directed to furnish an unimpeachable guarantee before his prayer for travelling abroad can be considered. Sri Dey points out that even the wife of the petitioner is a co-accused and the son of the petitioner is US citizen. In such circumstances the opposite party has every chance of absconding and the trial shall be frustrated.

12. Appearing for the opposite party, Sri Anindya Lahiri, Learned Counsel, per contra submits that having regard to a catena of decisions of the Hon''ble Apex Court the right to travel abroad is a fundamental right and cannot be unlawfully curtailed. He relies on the following decisions to buttress his arguments:-

i) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ;

ii) Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, ;

13. Sri Lahiri also relies upon an unreported decision of a Hon''ble Single Bench of this Court in C.R.R. 1326 of 2008 (In Re: Collectorate of Customs (now known as the Commissioner of Customs (Airport)), Kolkata vs. Jose Marcio Barreto Ramires and Anr.

14. Relying on all the aforesaid decisions Sri Lahiri emphasises that the right to travel abroad is the norm and curtailment thereof is the exception.

15. Sri Lahiri further argues that his client, the opposite party is more favourably situated than the fact in Jose Barreto''s case. He submits that while Jose Barreto was allowed to travel abroad although investigation in his case was still pending and he was a foreign national, the opposite party is an Indian national and the investigation in his case, being special case No. 17/2010, has been completed and charge-sheet filed in 2010.

16. An important plank of Sri Lahiri''s submission is that it is for the Passport Authority to decide on revoking or impounding the passport of the opposite party. He submits that the Passport Authority has not declared any objection till date to the application of the petitioner for return of his passport and therefore to travel abroad. He points out that the CBI has no locus standi to oppose the prayer of the opposite party to travel abroad. In this connection Sri Lahiri draws the attention of this Court to section 10(3)(e) of the Passport Act which reads as follows:-

"The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India;"

17. Sri Lahiri draws the attention of this Court to several orders passed by the Learned Trial Court allowing the other co-accused persons to travel abroad. He submits that none of the co-accused persons have interfered with the administration of justice by being permitted to travel abroad and such fact has been recorded by the Learned Special Court by its Order No. 134 dated 10th December, 2013.

18. Sri Lahiri also draws the attention of this Court to the Order passed by the Hon''ble Single Bench dated 06.08.2013 in WP 5919 (W of 2013) qua the

opposite party. The operative portion of the said Order reads as follows:-

"WP 5919 (W of 2013) is disposed of by permitting the petitioner to apply to the appropriate Court for relaxation of the conditions of bail. The appropriate Court should consider the matter in accordance with law and uninfluenced by the liberty given to the petitioner by this Order. If the relevant condition is relaxed by the appropriate Court the CBI and the Passport Authorities should co-operate to ensure the immediate release of the passport to the petitioner."

19. Having considered the rival submissions and the materials on record this Court notices that by Order No. 19 dated 17th July, 2009 in Special Case No. 17/2010 the Learned Special Court was pleased, while granting bail to the opposite party, restrain him from leaving the territory of India without permission of the Court. Thereafter this Court further notices the pleading in paragraph 10 of the instant revisional application being C.R.R. No. 448 of 2014 regarding the fact that the application of the opposite party filed in November, 2011 seeking return of his passport and permission to travel to USA was rejected by the Learned Special Court vide Order dated 29.12.2011. Relief was not granted by this Court to the opposite party in Criminal Revisional Miscellaneous Application No. 1689 of 2012 challenging the Order dated 29th December, 2011.

20. Thereafter the petitioner filed WP 5919 (W of 2013) and the solemn Order dated 6th August, 2013 passed by this Court was clear on the terms and conditions of consideration by the Learned Special Court. Such Order dated 6th August, 2013 is already quoted above in this judgment.

21. The said Order dated 6th August, 2013 is unambiguous on the exercise of jurisdiction by the Learned Special Court while considering the prayer of the opposite party which must be "in accordance with law and uninfluenced (emphasis applied) by the liberty given to the petitioner in this Order." The Hon"ble Single Bench further made it clear that the passport of the petitioner will be immediately released "if" the relevant condition of bail is relaxed by the Learned Special Court.

22. This Court notices that in spite of the unambiguous language of the Order of the Hon"ble Single Bench dated 6th August, 2013, the Learned Special Court in spite of rejecting a similar prayer of the opposite party by its Order dated 29th December, 2011 stepped into a realm of overzealousness while considering the matter after the High Court's direction dated 6th August, 2013. It is noticed that after allowing the petitioner to travel abroad and directing the passport authority to release the passport of the opposite party, the Learned Special Court notes:-

"Accordingly, the petition is disposed of and the Order of the Hon"ble Court is complied with."

23. In the opinion of this Court the Learned Special Court failed to construe the true tenor of the Hon"ble High Court's Order directing consideration of the prayer of the opposite party by applying its judicial mind. The Learned Special

Court, with respect, was required to fathom the true implication of the language used by the Hon"ble High Court to the effect that the appropriate Court will:-

a) consider the matter in accordance with law;

b) uninfluenced by the liberty given to the petitioner (present opposite party) to approach the Learned Special Court on the strength of the High Court's Order.

24. It was perhaps an act of overzealousness on the part of the Learned Special Court not to read the expressions used by the Hon"ble Single Bench in their entirety and to have over focussed on only the aspect of liberty to apply granted by the Hon"ble Single Bench.

25. This Court is not unmindful of the fact that the framing of charge is an important event in the trial. The framing of charge is contained in chapter XVII section 211 of the Code of Criminal Procedure. The absence of the accused before the Learned Trial Court has the effect of seriously delaying the framing of charge and hence the trial. In such view of the matter this Court finds substance in the argument of Sri Dey that the opposite party-accused No. 1 should be called upon to appear before the Court on the date fixed for framing of charge.

26. It needs no further mention that prior to the date fixed for framing of charge the Learned Special Court would hear the application for discharge filed by the opposite party under section 239 of the Cr.P.C.

27. This Court also notices that the opposite party-accused No. 1 requires to adopt a more credible stand before the Learned Special Court. On the one hand when the time is ripe for fixing a date for framing of charge in Special Case No. 17 of 2010, the opposite party has taken recourse to an available legal provision praying for discharge under section 239 of the Cr.P.C. Even before the said discharge application is heard out, the opposite party has prayed for permission to travel abroad knowing well by now that in the event the discharge application is decided against him, the Learned Special Court shall not be able to proceed further in his absence for framing of charge. The urgency of the opposite party to seek permission to travel abroad and at the same time to file a discharge application and not wait for its outcome is a circumstance which puts a cloud on credibility.

28. This Court is also not unmindful of the fact that the opposite party wants to travel abroad on family consideration. It is submitted by Sri Lahiri that the son of the opposite party is in employment in the USA and the opposite party has been blessed with a grandson who was born on 19th February, 2012. The opposite party as a grandfather is deeply desirous of visiting his grandson abroad.

29. While in respectful agreement with the ratio of the decisions relied upon by Sri Lahiri emphasising the fundamental nature of the right to travel abroad on the plank of the right to personal liberty and life, this Court also notices the unexceptionable principle that all rights are subject to reasonable restrictions.

30. On the other hand this Court cannot also be unmindful of the procedure required by law of the opposite party to be present at the time of framing of charge so that an important milestone in the trial is not held up. Once the discharge application of the opposite party is decided and the issue of framing of charge becomes settled, thereafter the opposite party may then proceed to apply for travelling abroad after completion of the formalities as required by law. This Court, while in respectful accordance with the ratio of the decision in Jose Barreto's case adds that in view of the distinct features in the present case when the charge sheet has already been submitted and the Learned Special Court is in the process of hearing the discharge applications and thereafter to proceed on the issue of framing of charge, it would be an abuse of due process to allow the opposite party to travel abroad at this stage. This Court respectfully observes that the need to follow the principles and procedure of trial laid down in the Code of Criminal Procedure and the need not to frustrate the trial is the paramount feature in the present case which looms above the existence of an extradition treaty with a foreign country such as the USA.

31. In the backdrop of the aforesaid facts and circumstances this Court holds that the Order impugned No. 134 dated 10th December, 2013 passed by the Learned Special Court is to be in abeyance for the present. The Learned Special Court is required to fix early dates for hearing the discharge application of the opposite party accused No. 1 and thereafter to decide on the issue of framing of charge subject to its calendar. The opposite party shall be thereafter entitled to renew his prayer before the Learned Special Court strictly in terms of the liberty granted to him by the Hon"ble Single Bench by its Order dated 6th August, 2013 and the Learned Special Court will be entitled to consider afresh the requirement of the opposite party in the trial qua his application for permission to travel abroad independently and on its own merits. The Learned Special Court may impose any further or special conditions which seems appropriate to it at that stage.

32. C.R.R. No. 448 of 2014 is accordingly disposed of. There will be however no order as to costs. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.