

(2008) 06 JH CK 0037
In the Jharkhand High Court
Case No : Criminal Rev. No. 144 of 2008

Dr. Tribhuwan Nath Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438(2)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471
Prevention of Corruption Act, 1988 — Section 13, 13(2)

Citation : (2008) 57 BLJR 12

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : B.B. Sinha and Delip Jerath, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This Cr. Revision is directed against the order dated 16.2.2008 passed by Shri P.C. Agarwal, Special Judge, C.B.I.-cum-Additional Sessions Judge, VIII, Dhanbad in R.C.1A/03-D whereby and whereunder the petition filed on behalf of the petitioner on 4.12.2007 for seeking permission to leave India for United States of America for a period of six months in connection with specialized medical treatment of his wife was refused.

2. The relevant fact of the case is that cognizance of the offence was taken for the offence under Sections 120B, 420, 467, 471 I.P.C. and Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act against the petitioner under the allegation that the petitioner being the Director of the Central Mining Research Institute, Dhanbad (in short CMRI) in prosecution of criminal conspiracy incurred loss to the Institute for his personal gains.

3. Learned Senior Counsel Mr. Sinha made the following submissions: The petitioner retired several years ago and now he entered into 68 years whereas the age of his wife was 65 years, both residing in Housing Colony, Dhanbad.

4. The petitioner's wife had certain cardiac problem which required specialized treatment since 2001. She was operated at the Escorts Heart Institute & Research Centre, New Delhi in the year 2002 and was the red card holder of the said institute. With her advancing age she developed certain knee problem for which she required total knee replacement of both knees at a time and keeping in view of exigency the petition sought for indulgence of the Special Judge, C.B.I. for six months leave for going to U.S.A. which was refused.

5. Learned Counsel assailed the impugned order dated 16.2.2008 of the Special Judge, C.B.I.-cum-Additional Sessions Judge, VIII, Dhanbad on the ground that apart from discussing the exigency as presented by the petitioner for the required treatment of his wife in U.S.A., the learned Court discussed the merit of the case and the allegations made against the petitioner though he was admitted to bail u/s 438(2) Cr.P.C. Pursuant to the direction made by the learned Trial Court, the petitioner had filed an affidavit in support of the contention what he had made in the petition, seeking permission to go abroad for six months but of no avail and the same was refused only on the ground that at no point of time his wife was examined by any U.S.A. based Doctor at an early occasion and that though the petitioner had given reference to his three daughters who were settled down in U.S.A. but without disclosing the place of their abode. The Court further raised the finger as to where he would take away his wife for treatment and as to which place nursing of all his three daughters would be available. These questions raised by the Court were speculative in nature which could not be disputed by the Counsel for the C.B.I. The petitioner had annexed the relevant documents in support of the ailment of his wife but without appreciation and the prayer of the petitioner was refused with the observation,

Admittedly vide para-10 of the petition and para-5 of the affidavit, it has been contented that the treatment and follow up rehabilitation process is a time taking and each of the knees has to be treated one after the other. In that view of the matter, also, if any lenient view or sympathetic approach are taken into consideration in the attending facts and surrounding circumstances of the case, will never be, in my view, can be named as judicial approach because no time limit, can be reasonably predicted and mathematically calculated in view of the uncertainty of the averment made in para-10 of the petition.

6. Learned Counsel pointed out that the approach of the learned Trial Judge was certainly not judicious while rejecting the prayer of the petitioner as his wife has been deprived of the adequate treatment and proper nursing for no fault of her. Besides her treatment at U.S.A., learned Counsel submitted that she needed psychological as well as emotional protection of her daughters as she was having no male issue. In the facts and circumstances, the prayer of the petitioner may be reconsidered in this Revision by allowing him to go to U.S.A. for a period of six months in connection with treatment of his wife and that he was ready to adhere to the conditions if at all imposed by this Court.

7. Mr. Rajesh Kumar, Standing Counsel for the C.B.I. opposed the contention and

submitted that in view of advance medical treatment available in India the petitioner may not be permitted to leave the country, who is facing serious charges under Prevention of Corruption Act besides other allegations in I.P.C. Even no reference letter of any U.S.A. based Doctor for the required treatment of his wife has been submitted by the petitioner in support of his claim and prayer and the learned Trial Court has rightly rejected this petition by the impugned order which did not call for interference.

8. Learned Senior Counsel Mr. Sinha by way of reply relied upon the decisions reported in (2000) 9 SCC 232 . The Apex Court in Chief Enforcement Officer/ Enforcement Director and Anr. v. Jairaj V. Java in the similar situation observed,

We are satisfied that the respondent though had gone abroad, has come back on being so directed by this Court. Hence there is nothing to indicate that the respondent would try to abscond. If so, for the speedy progress of the trial we direct the respondent to surrender his passport before the trial court so as to ensure his presence during the time of trial.

Learned Counsel has submitted that the family of the respondent is now residing in Dubai and his business is also centred at that place and hence he may have to go to Dubai for short durations. We permit the respondent to approach the High Court and secure permission for going abroad during any interval which the High Court deems necessary to be granted after hearing both sides.

9. Having regard to the facts and circumstances of the case and perusal of the Annexure-3 series which are coronary angioplasty report of Mrs. Sharda Singh, prescriptions of the said Hospital and the report related to M.R.I. Scan of left knee joint (Annexure-4 series) I find that the prayer of the petitioner reasonably requires consideration.

10. In the result without discussing the merit of the case, the petitioner is permitted to leave India for six months and may take away his wife for the better management and treatment of her physical problems on the cash deposit of Rs. 75,000/- and the bond duly executed by two of his near relatives who are citizens of India with the undertaking that he would return back positively by the end of December, 2008. He would be properly represented through his lawyer in his absence even during examination of the witnesses thereby proving of the relevant documents, failing to which the Special Judge would be within his competence to pass appropriate order. Under the circumstances the order impugned passed by the Special Judge, C.B.I. on 16.2.2008 in R.C.1A/03-D is set aside.

Accordingly, this petition is allowed.