(2021) 10 DEL CK 0057

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1344 Of 2021

Mandeep Kaur Dhillon & Anr APPELLANT

Vs

CBI/BS And FC/New Delhi RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 7, 7A, 8, 12, 13(1)(d), 13(2)

Citation : (2021) 10 DEL CK 0057

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Amit Sharma, Mandeep Sharma, Ripudaman Bhardwaj, Kushagra Kumar

Final Decision : Disposed Of

Judgement

Mukta Gupta, J

1. By this petition the petitioners Mandeep Kaur Dhillon and Mandeep Singh Dhillon who are wife and husband seek setting aside of the order dated 12th May, 2021 passed by the learned Additional Session Judge as also permission to travel to USA for a maximum period of three months and directions to the CBI to withdraw the restrain order i.e. LOC issued against them.

2. A brief background resulting in filing of the petition is that CBI registered RC No. BDI/2016/E/0011 under Sections 120-B read with 420/467/468/471 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 on 28th September, 2016 on the complaint received from Shri T.N. Sharma, Zonal Manager, UCO Bank, Vigilance Department, New Delhi against M/s. Shree Shyam Pulp & Board Mills Ltd. (in short SSPBML), Naresh Kumar Gupta, CMD M/s. SSPBML and Mr. Amit Kumar Gupta, Director M/s. SSPBML and unknown bank officials and others.

3. The allegations against the accused in the complaint were that M/s. SSPBML through its Directors approached UCO Bank, Nehru Place, New Delhi for taking

over its account from State Bank of Indore and Allahabad Bank. Consequently, UCO Bank took over the entire term loan of State Bank of India amounting to Rs. 1904 lakhs and from Allahabad Bank amounting to Rs. 400 lakhs in November, 2005 and sanctioned additional cash credit facility of Rs. 650 lakhs. A consortium of 7 banks consisting of UCO Bank as the lead bank, e-Syndicate Bank, e-Dena Bank, e-State Bank of Bikaner & Jaipur, e-Oriental Bank of Commerce, IDBI Bank and e-Corporation Bank was formed for funding the expansion project of the company. The allegation against M/s. SSPBML were that by submitting forged and fabricated documents the bank was induced to sanction credit facilities such as term loan, CC Limit and letter of credit. The company allegedly submitted false debtors list, confirmation letters for consignment of sales, manipulated its financials and diverted funds for the purposes other than for which the loans were sanctioned thereby causing a wrongful loss of Rs. 695.87 crores to the 7 public sector banks with corresponding gain to the accused. It was also alleged that M/s. SSPBML did not purchase any machinery from the supplier as mentioned in the TEV Report of M/s. Hardicon, which was prepared at the time of expansion of the unit.

4. In RC No. BDI/2016/E/0011 a charge-sheet was filed before the learned Additional Session Judge on 29th December, 2020 against 13 accused, however the petitioners were not named as accused in the said charge-sheet nor any cognizance was taken against the petitioners. However, on 12th January, 2021, another RC No. 217/2021/A/0001 under Section 7/7A/8/12 of the PC Act was registered against the officials of CBI and the petitioner No.1 alleging that R.K. Sangwan, DSP the investigating officer of RC No. BDI/2016/E/0011 offered a bribe to Insp. Kapil Dhanked who passed confidential information to DSP R.K. Sangwan to favour the accused person. Pursuant to the registration of RC No. 271/2021/A/0001 officials of CBI were arrested and the petitioner's house was searched, however the petitioners have not been arrested. In RC No. 217/2021/A/0001 a charge-sheet and supplementary charge-sheet have been filed against accused persons including petitioner No.1 as an accused.

5. According to learned counsel for the petitioner though RC No. 217/2021/A/0001 was registered primarily on the ground that DSP R.K. Sangwan acted as conduit for petitioner No.1, however he has not been charge-sheeted as an accused. Petitioner No.2 is not an accused in any of the RC registered or charge-sheeted. It is stated that on the intervening night of 3rd May, 2021 and 4th May, 2021 due to COVID-19 pandemic situation and non-availability of the sufficient medical facilities and above all the advisory of Government of USA directing US nationals to leave as soon as it is safe, as also to look after the old and ailing father of petitioner No.2 who is residing in USA, the petitioners along with their minor daughter were departing to USA and while they were boarding the flight, they were stopped by the officials of the FRRO stating that CBI has passed some directions to restrain the petitioners from leaving India without their permission.

6. According to the petitioner, investigation in RC No. BDI/2016/E/0011 was

pending since 2016 and during this period the petitioners visited USA and other countries several times, however they were never restrained from leaving the country. Further, the petitioners have returned back to India whenever they went outside. The petitioners are mostly residing in India with their minor daughter, who is studying at a school at Noida. Having been restrained from departing India, the petitioners filed an application before the learned Additional Sessions Judge seeking permission to visit USA till August, 2021 which application was dismissed vide the impugned order dated 12th May, 2021, hence the present petition.

7. Learned counsel for the petitioner states that the petitioners have faced a protracted investigation for the last five years and when the charge-sheet was filed in December, 2020 the petitioners were not charge-sheeted as an accused. However, in the subsequent charge-sheet, petitioner No.1 has been charge-sheeted as an accused. The petitioners state that they are willing to abide by any direction passed by this Court. In view of the exigencies involved, they be permitted to travel to USA where the old father of the petitioner No.2 is residing so that they can look after him. The petitioners are also willing to deposit security before this Court so as to ensure that the petitioners will return back to the country of their residence.

8. According to learned SPP for the CBI, the petitioner No.1 is an accused in the above-noted FIR and in view of her complicity and the siphoning of funds, there is flight risk and there can be no certainty that the petitioner will come back to India or not to face trial. According to the CBI the role which has surfaced qua the petitioner No.1 during the course of investigation is that the petitioner No.1 was inducted as an Additional Director of M/s. SSPBML in January 2011 and thereafter the company approached UCO Bank for financing Rs. 252 crores under the consortium for the project. The UCO Bank approved the project and sanctioned Rs. 50 crores term loan. Further, cash credit limit was also enhanced by UCO Bank from Rs. 45.58 crores to Rs. 62.58 crores in May, 2011. It is thus the case of the CBI that forged documents were prepared when the petitioner was the Additional Director of M/s. SSPBML. Thus the petitioner No.1 was actively involved in the affairs of M/s. SSPBML and regularly attended the board meetings.

9. Investigation further reveals that an amount of Rs. 20.99 crore was remitted to M/s. Global Paper Equipment Supplier LLC (in short GPES). M/s. GPES was controlled by Jagmohan, brother of petitioner No.2 and brother-in-law of petitioner No.1 and no machinery/ fixed asset was supplied by M/s. GPES against the funds remitted. It was also revealed that a firm, namely, M/s. Orien Paper Machinery (in short OPM) having Baljinder Singh as a partner was incorporated at the instance of petitioner No.2, being his cousin. As per the forensic audit report, false/ bogus bills/ invoices were issued by M/s. OPM on M/s. SSPBML.

10. As per the CBI the two petitioners are US nationals and once allowed to go to USA, the petitioners will not return to India and in the light of these facts, the

learned Additional Sessions Judge rightly passed the impugned order and hence the petition be dismissed. It is further stated that as regards the health of the father-in-law of the petitioner No.1 is concerned, he has been managing the said heath issue since 2009 and at this stage nothing new having cropped up, the petitioners be not permitted to go.

11. In para 10 of the petition, the petitioners have stated that they have deep root in the society and own business and number of immovable and movable properties in India. They have ancestral house i.e. Dhillon Farm, Bazpur Doraha, Behind HP Petrol Pump, Kashipur, Rudrapur Road, Bazpur, District Udham Singh Nagar, Uttrakhand measuring about 1 acres. The petitioner No.1 owns two plots measuring 252.5 sq. meter having Khata No. 390, Plot No. 248 KH and 303 sq. meter having Khata No. 390 in plot No. 248 KH respectively at Dadri Road, Surajpur, Greater Noida, Gautam Budh Nagar. Petitioners are running a business of stone crusher under the name and style of Suraj Crushers at Kashipur, Udham Singh Nagar. The petitioners also own and possess 12.5 acres of commercial land at Udham Singh Nagar, Uttrakhand.

12. From the contention as noted above, it is evident that even on registration of RC No.217/2021/A/0001 under Sections 7/7A/8/12 of the PC Act, petitioner No.1 has been charge sheeted and no charge sheet has been filed against petitioner No.2. Petitioner No.2 cannot be held liable for the acts of the petitioner No.1 as the Additional Director of M/s SSPBML or his brother namely Baljinder, who is a partner in OPM. Despite investigation having been carried out in the two RCs, there being no accusation and charge sheet against petitioner No.2, this Court is of the considered view that petitioner No.2 is entitled to grant of permission to visit USA.

13. Consequently, petitioner No.2 is permitted to go to USA for a period of three months alongwith his minor daughter from the date he leaves the country to lookafter his ailing father subject to the condition that he will furnish a bank guarantee for a sum of Rs. 2 lacs, and file an affidavit indicating place of his stay in USA and the mobile number he would use during his stay in USA to the learned trial court. Further in view of the fact that petitioner No.1 has been charge sheeted and she is a US citizen, this Court does not deem it fit to grant permission to petitioner No.1 to travel to USA. As noted above, petitioner No.2 is at liberty to go USA alongwith his daughter subject to the condition imposed above.

14. Petition is disposed of

15. Order be uploaded on the website of this Court.