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**(2003) 07 DEL CK 0148**

**In the Delhi High Court**

**Case No : Criminal M (M) No. 522 of 2003**

Smt. Anjana Batheja and Another

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

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**Date of Decision : 14-07-2003**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471  
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

**Citation :** (2003) CriLJ 4301 : (2003) 106 DLT 260 : (2003) 70 DRJ 30 : (2003) 3 JCC 1433 : (2005) 1 RCR(Criminal) 1005 : (2003) RLR 528

**Hon'ble Judges :** Jiwan Dass Kapoor, J

**Bench :** Single Bench

**Advocate :** Jatan Singh, for the Appellant; H.J.S. Ahluwalia, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

J.D. Kapoor, J.—Mind-blowing situation has arisen in these proceedings. One Chander Prakash is facing trial before Sh. V.K. Jain, Special Judge CBI Court Delhi for the offences punishable under Sections 420/467/468/471 read with Section 120-B of the Indian Penal Code and Sections 13(2), 13(1)(d) of Prevention of Corruption Act. He is on bail. Since he was on bail, he made an application for release of his passport for going to Hongkong where he has a business. In order to ensure his presence on the date of hearing, Learned Special Judge has passed an order which has overtones of keeping his mother and wife as hostages as he has directed the petitioner not only to deposit their passports but also deposit Rs.1 lac by way of F.D.R if he wants his passport to be released.

2. Forced by circumstances, the petitioner after depositing their passports went to Hongkong where he fell seriously ill. There was nobody to look after him at Hongkong. Consequently, his mother and wife moved an application for releasing their passports before the learned Special Judge but their applications were dismissed vide order dated 4.3.2002 though an offer to keep the sister of the accused as another hostage was made as they offered to deposit the passport of

the sister of the accused and also to furnish the bank guarantee.

3. Through this petition they have challenged not only the legality and rationality of the impugned order but its propriety and harshness. It is pertinent to mention here that since the release of the accused, he has been regularly attending court proceedings even during brief sojourns to Hongkong. More so his appearance was also exempted till the framing of charges.

4. Not only on the face of it but even on the premise of layman's understanding condition of releasing the passport of the accused subject to deposit of passports of his mother and wife and deposit of Rs.one lac by way of F.D.R appears to be highly irrational, illegal, harsh and difficult to ram down the throat as it is unknown to the criminal jurisprudence.

5. Every criminal court is a creature of Criminal Procedure Code and as such is neither above it nor can rise above it. The court is empowered to impose any kind of a condition upon the accused to ensure his presence but to curtail or scuttle the liberty of other members of his family who are in no way connected with the crime is to take away precious fundamental right of free movement of an individual granted by the Constitution. This is nothing but a medieval way of administering justice when family members used to be kept as hostages in lieu of either release of their detained kith and kin or procure the surrender of the wanted man.

6. Once passport of the accused was released on the condition of filing FDR of Rs.1 lac though the legality of such a condition is in serious doubt imposing of any other condition or order for depositing the passports of his mother and wife was beyond the judicial domain of the court.

7. If the Learned Special Judge was of the opinion that the release of passport to the accused was not safe as he may flee from justice, such a request could have been rejected and if allowed any other reasonable kind of condition could have been imposed upon him and him alone.

8. The impugned order is wholly illegal, irrational and hits at the foundation of fundamental right of a person and jurisprudential structure and is Therefore difficult to sustain and has to go. Merely because the accused had shown his willingness to ensure his appearance on the next date of hearing by way of depositing the passports of his wife and mother does not mean that the Court should also pass the order directing him to do an act for which the accused had neither any legal authority nor any legal right. Every individual is independent entity. How can on the statement of an accused passports of his family members can be ordered to be deposited. To imagine this is beyond comprehension.

9. Without tarrying further on this aspect and concept of liberty and freedom of movement of the citizens, I feel persuaded to set aside the impugned order which cannot stand even prima facie judicial scrutiny.

10. In the result the petition is allowed. The impugned order is hereby set aside.

Passport of the petitioners, if deposited, shall be released to them forthwith.

11. For guidance, copy of this order be sent to all the judicial officers.