

(2013) 12 CAL CK 0070
In the Calcutta High Court
Case No : C.R.R. No. 2199 of 2013

Sri Amarendra Nath Ghosh

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 211 : (2014) 1 CALLT 169 : (2014) 2 CHN 452 : (2014) 2 RCR(Criminal) 771

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Sudipta Moitra, Mr. D. Basu and Mr. S. Chakraborty, for the Appellant; Himangshu De and Mr. Mrityunjay Chatterjee for the C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Joymalya Bagchi, J.—Order dated 26.04.2013 passed by the learned Special Judge, Special Court, Alipore in Special Case No. 7 of 1998 arising out of R.C. Case No. 6E/1996 rejecting the prayer of the petitioner to go abroad has been challenged. The petitioner claims to be a businessman having various business interests, some of which are situated abroad. He has been implicated as an accused person in Special Case No. 7 of 1998 arising out of R.C. Case No. 6E/1996 in respect of which charges have just been framed and the date for recording evidence has been fixed on January 20, 2014.

2. It appears that the petitioner had absconded and was finally detained in West Germany in 2002. Extradition Proceeding was initiated and he was brought to the country in 2007. He was released on bail on August 22, 2008 subject to various conditions. From time to time conditions have been relaxed, however, the petitioner is subjected to the condition that he shall not travel abroad without permission of the Court. The petitioner made a prayer before the Trial Court seeking permission to travel abroad on the ground that such travel is necessary for catering to his overseas business interests.

3. The Trial Court in view of the fact that the petitioner had absconded for a protracted period of time, rejected such prayer. Hence this application.

4. Mr. Moitra, learned senior counsel appearing for the petitioner submitted that the petitioner had been in detention since 2002 and upon his release on bail has been regularly attending the trial proceeding. He further submitted that there was no chance of his client absconding and that he had already suffered detention for more than eight years in connection with this case since 2002. He further undertook that his mother, Sati Ghosh, permanent resident of this city, shall stand as a guarantee on his behalf. According to him, the fundamental right of the petitioner to travel abroad to earn his livelihood ought not to be whittled down due to the pendency of the criminal proceeding which may take years to conclude.

5. Mr. De, learned senior counsel appearing for the C.B.I., opposed such prayer and submitted that in view of the gravity of the offence which related to defrauding a Nationalized Bank of several crores of rupees and the past conduct of the petitioner he ought not to be permitted to go abroad. A red corner notice had been issued against the petitioner in order to procure his arrest and as a result thereof he was ultimately detained in West Germany and brought to justice after a protracted extradition proceeding.

6. Having considered the materials on record, I find that the petitioner had been extradited to the country after being detained in West Germany. However, since his release on bail he has been regularly attending the trial proceeding. I find that although the petitioner was extradited to India in 2008 charges in the instant case was framed after about five years as late as on 25.11.2013 and, that too, at the insistence of this Court.

7. I am informed that there are about sixty prosecution witnesses cited in the charge sheet and a large number of documents are also to be exhibited during trial. Hence, there is hardly any chance of the trial in the instant case concluding in the near future.

8. While one cannot ignore the necessity of subjecting the petitioner to stringent conditions, to ensure his presence during trial, his fundamental right of free movement including his right to go abroad for earning his livelihood cannot also be lightly brushed aside.

9. It brooks no controversy that the right to go abroad is a part of the fundamental right to life and personal liberty as enshrined under Article 21 of the Constitution of India as enunciated in the case of *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and Another,

10. Hence, when a citizen is accused of an offence, his right to free movement may be subjected to restrictions. However, such restrictions must be just reasonable, fair and proportionate to the facts and circumstances of the case. Sovereign right of administration of criminal justice on one hand must be evenly

balanced with the right of free movement of the individual on the other hand. In *Srichand P. Hinduja Vs. State Through C.B.I., New Delhi*, the Apex Court even permitted an accused who is a foreign national to go abroad during trial subject to strict conditions.

11. In the factual backdrop of this case and bearing in mind that the trial in the instant case is not likely to be concluded in the near future, I am of the view to put an absolute embargo on the travel of the petitioner abroad till conclusion of trial would amount to an unreasonable restriction on his fundamental right to free movement including his right to go abroad more particularly when such activity is linked with the petitioner's livelihood. However, such right cannot be permitted to be enjoyed in an unrestricted manner and has to be subjected to adequate restrictions so as to ensure his timely return to India to face trial.

12. The petitioner has filed the supplementary affidavit disclosing his itinerary and the countries that he would like to visit in connection with his business i.e. Thailand and United Kingdom. Report was sought for in that regard from Superintendent of Police, Central Bureau of Investigation BS&FC who has filed two reports dated 11.11.2013 and 02.12.2013 respectively before this Court. Let such reports be kept with the record. From such reports it appears that there are extradition treaties subsisting between the United Kingdom and Thailand on one hand and Union of India, on the other.

13. In view of such fact, I am of the considered opinion that the petitioner may be permitted to go abroad in terms of the itinerary as set out in paragraph 1 of the supplementary affidavit affirmed on December 3, 2013. He shall leave for Bangkok on December 30, 2013 and remain there for five days. Thereafter he intends to leave for London on January 6, 2014 and return to Bangkok on January 11, 2014 and therefrom would return to Calcutta on January 14, 2014.

14. Accordingly, the petitioner is permitted to go abroad in terms of the aforesaid itinerary on and from 30th December, 2013 and return to Calcutta on 14th January, 2014 subject to the following conditions:--

(a) The petitioner shall furnish a bond of Rs. 5,00,000/- (Rupees five lacs only) along with a cash security of equivalent amount to the satisfaction of the Trial Court undertaking to act in terms of this order and return to Calcutta on or before 14th January, 2014;

(b) Smt. Sati Ghosh, wife of Late Mrigendra Nath Ghosh, residing at 16A, R.K. Ghosal Road, Kasba, Kolkata - 700 042 (the mother of the petitioner) shall personally stand as surety and execute a bond to the satisfaction of the trial Court undertaking that the petitioner shall act in terms of this order and return to Calcutta on or before 14.01.2014. She shall also affirm an affidavit to that effect before the Trial Court;

(c) The petitioner shall intimate his travel itinerary to Superintendent of Police, Central Bureau of Investigation, BS&FC, Calcutta and also intimate the addresses

where he would be residing abroad prior to his departure;

(d) He shall report to the aforesaid Superintendent of Police, Central Bureau of Investigation, BS&FC, Calcutta on a daily basis over telephone, the number whereof would also be furnished before hand;

(e) He shall return to Calcutta on or before 14th January, 2014 and within 24 hours thereof hand over his passport to the aforesaid Superintendent of Police and would positively personally appear in the Trial Court on 20.01.2014;

15. Central Bureau of Investigation authorities shall satisfy itself as to whether the above mentioned conditions (i), (ii) and (iii) have been complied with and thereupon hand over the passport to the petitioner without unnecessary delay and also render all necessary assistance so that the petitioner may avail of this order. The instant revisional application is, accordingly, allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.