

(2015) 08 DEL CK 0146

In the Delhi High Court

Case No : Writ Petition (Crl) 1616 of 2015

Tridivesh Singh Maini

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 102(1), 482
Passports Act, 1967 — Section 10(3)

Citation : (2015) 08 DEL CK 0146

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Siddharth Luthra, Senior Advocate, Pramod Kumar Dubey, Neha Gupta, Megha and Viraj Gandhi, for the Appellant; Rajdipa Behura, S.P.P., Monica Gupta and Sanskriti Jain, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Siddharth Mridul, J—The present petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) prays for the following reliefs:-

"(A) Issue a writ/order/direction and quash the impugned order dated 06.06.2015 passed by the Ld. Special Judge, CBI, Patiala House Courts, Delhi in the matter of CBI versus Tridivesh Singh Maini bearing RC-AC-1/2015-A0002.

(B) Pass a writ in the nature of certiorari and quash the Look Out Circular issued qua the petitioner.

(C) Pass an order directing the respondent/CBI to release the Passport of the petitioner bearing No. Z2400855 bunched along with old Passport No. G8599008.

(D) Pass any other order/s as this Hon'ble Court may deem fit and proper in the interests of justice."

2. After some arguments, Mr. Siddharth Luthra, learned senior counsel appearing on behalf of the petitioner, on instructions from Mr. Pramod Kumar Dubey, Advocate undertakes that the petitioner shall not travel overseas or leave the shores of India by any means whatsoever, without the prior permission of this Court. Mr. Luthra, learned senior counsel on behalf of the petitioner invites my attention to the decision of the Supreme Court in Suresh Nanda Vs. C.B.I., AIR 2008 SC 1414 : (2008) CriLJ 1599 : (2008) 5 CTC 277 : (2008) 2 JT 174 : (2008) 2 SCALE 46 : (2008) 3 SCC 674 : (2008) AIRSCW 898 to urge that the police cannot impound a Passport under section 102(1) Cr.P.C. It is his submission that the impounding of a Passport can only be done by the Passport Authorities under section 10(3) of the Passport Act, 1967, and that too after issuing a Show Cause Notice in this behalf.

3. Mr. Luthra, learned senior counsel then invites my attention to a decision of this Court in Sumer Singh Salkan Vs. Asstt. Director and Others, (2010) 2 DMC 666 : (2010) 6 ILR Delhi 706 to urge that a Look Out Circular (LOC) can be taken by the investigating agency in cognizable offences under IPC or other penal laws, only where the accused is deliberately evading arrest and not appearing before the trial court despite non-bailable warrants and where there is a likelihood of the accused leaving the country to evade trial/arrest.

4. In view of the above decisions and the facts of the case Mr. Luthra, learned senior counsel would vehemently urge that the LOC impugned in the present petition be quashed and the petitioner's Passport be returned to him forthwith.

5. On the contrary, Ms. Rajdipa Behura, learned SPP appearing on behalf of the CBI submits that the present is a case related to corruption and has international ramifications. It is next urged on behalf of the CBI that the father of the accused namely Dr. J.S. Maini, who is the prime accused in the subject Regular Case, is a former Additional Secretary and Financial Advisor to the Ministry of Chemicals and Fertilizers, and is a main individual with immense clout and influence in the administration. Ms. Behura, lastly states that the accused are all members of the same family and are alleged to have given the impression to one M/s. Yara International that they can facilitate negotiations with Kribhco for the setting up of a joint venture and received illegal gratification in their accounts in lieu thereof. However, Ms. Behura, learned SPP appearing on behalf of the CBI, on instructions from Inspector Satender Singh fairly concedes that the Passport of the petitioner may be returned to him and the LOC can be kept in abeyance, subject to the petitioner filing an undertaking before this Court that he will not travel overseas, except with the prior permission of this Court.

6. In the present case, it is observed that although the preliminary enquiry was registered in February, 2014 and the Regular Case has been filed on 06.05.2015, the CBI is yet to summon the petitioner for interrogation or seeking any material in this behalf. Therefore, the only apprehension expressed on behalf of the CBI, that prima facie appeals to this Court, is that since the illegal gratification was allegedly received overseas in different countries, there is a likelihood of the

petitioner tampering with the evidence if he is permitted to travel abroad. However, in view of the decision of the Supreme Court in Suresh Nanda (supra) and the facts and circumstances of the case, the impounding of the petitioner's Passport is untenable. The CBI has no authority in law so to do. No Show Cause Notice for the impounding of the petitioner's Passport has admittedly been issued by the Passport Authorities. In view of the direction I propose to issue in this petition, I see no good reason to disentitle the petitioner from being returned his Passport, subject to his not leaving the country, without the prior permission of this Court. Insofar as the LOC is concerned, apart from the apprehension expressed above, there is neither any hint nor allegation that the petitioner will not be available for interrogation and will not present himself at the ensuing trial. The petitioner has not been summoned by the CBI as yet despite the preliminary enquiry having been registered in February, 2014. Therefore, there is no question of the petitioner deliberately evading arrest or not appearing before the trial court. Furthermore, in view of the circumstance that the petitioner has undertaken not to travel overseas without the prior permission of this Court, there is no justification for insisting upon the LOC.

7. For the foregoing reasons, the impugned order dated 06.06.2015 is set aside and quashed. The Regional Passport Officer to whom the subject Passport has been forwarded for impounding post-seizure by the CBI is directed to return the same to the petitioner upon the latter filing an application in this behalf. The IO in the subject Regular Case shall join the petitioner in making such an application to the Regional Passport Officer. Upon such joint application being filed, the Regional Passport Officer is directed to return the petitioner's Passport forthwith. The LOC is accordingly rendered infructuous. The competent authority shall be informed accordingly by the CBI. The above order shall remain subject to the petitioner filing an undertaking that he shall not travel overseas without the prior permission of this Court, within three days from today.

8. With the above directions, the writ petition is disposed of.

9. Dasti to counsel for the parties.