

Directorate Of Enforcement vs Kanwar Deep Singh on 24 May, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 1748/2022

DIRECTORATE OF ENFORCEMENT

Through: Mr.Zoheb Hossain, SPP with
Mr.Vivek Gurnani, Mr.Sho
Advocates.

versus

KANWAR DEEP SINGH

Through: Mr.Vikram Chaudhari,
Advocate with Ms.Ria Kha
Mr.Keshavam Chaudhari, M
Sehgal, Mr.Gunjan
Mr.Prabhneer Swani, Advo

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 24.05.2022

1. This application is filed by the applicant with the following prayer:

"a) Vacate the stay granted vide order dated 22.04.2022 whereby, the permission granted by the trial court to the applicant/respondent to travel to the U.S.A. for treatment of his prostate cancer, has been kept in abeyance, as the restraint so posed may result in a grave miscarriage of justice;"

2. The learned Trial Court passed the following impugned order dated 08.04.2022 as under:

"13. It was submitted on behalf of ED that the medical documents did not highlight the condition of the applicant/ accused No.7 and that a medical board be constituted to assess his situation. The previous conduct of the applicant/ accused No.7 when he had been remanded to custody was also adverted to. However, ED itself has got the medical documents verified and no doubt has been expressed therein regarding the applicant/ accused No.7 suffering from prostate cancer. As regards the contention that the treatment is available in India, the applicant./ accused No.7 cannot be denied the right to avail treatment from a doctor of his choice or the liberty to get treatment from USA. Though an accused does not have an unfettered right to travel abroad but any apprehensions expressed can be met with suitable conditions. It was

also submitted on behalf of ED that the brother of the applicant/ accused No.7 had submitted in the application for anticipatory bail filed by him that he had been threatened by the applicant/ accused No.7. However, the Ld. Counsel for the applicant/ accused No.7 has submitted that the applicant/ accused No.7 would not come in contact with his brother and it is made clear that if the applicant/ accused No.7 tries to contact his brother (who had moved the application for anticipatory bail before the Court of Ld. Special Judge, CBI, Chandigarh), it would be considered as a violation of the terms and conditions on which this application is being allowed to USA by then, in terms of what is stated in the affidavit, the applicant/ accused No.7 is granted permission to travel to USA for a period of 15 (fifteen days) and prior to his undertaking the journey, he would duly inform the Court and the ED the exact date of his appointment, and his itinerary. He would also furnish his contact address and number to be used during his stay in USA. The application filed by the applicant/ accused No.7 is allowed and the applicant/accused No.7 Kanwar Deep Singh is granted permission to visit Los Angeles, United States of America for a period of 15 days with him informing the Court and ED the date of his appointment and itinerary prior to his undertaking the journey, subject to the following conditions :- i. That applicant /accused No.7 Kanwar Deep Singh shall furnish FDR for a sum of Rs. Fifty Lacs (Rs.50 lacs) which shall be subject to forfeiture in favour of Government of India in case the applicant/accused No.7 violates any of the conditions of this order.

ii. That the applicant/accused No.7 shall inform the Court about his arrival in India within hours, of his return and shall surrender his Passport.

iii. The applicant/accused No.7 shall not extend his stay abroad without permission of this Court.

iv. That the applicant/Accused No.7 shall not tamper with the evidence or influence witnesses in any manner and shall not use the permission granted to him contrary to the rules.

v. This permission shall be subject to other applicable rules and shall not be deemed as direction to any other authority except the permission from the side of the Court.

vi. During his stay abroad. Applicant/accused No.7 shall be represented before the Court by his counsel and no adjournment shall be requested on his behalf due to his absence.

vii. That the applicant / accused No.7 shall give the details of his stay in U.S.A. and contact address and number used by him during that period. viii. That the applicant/ accused No.7 shall not travel outside Los Angeles, USA without express permission of this Court.

ix. That the applicant/ accused No.7 shall not cry to contact his brother (who has moved the application for anticipatory bail In the Court of Ld. Special Judge, CBI, Chandigarh).

x. That the applicant/ accused No.7 shall not deal with any property in USA while he is in USA."

3. The reply filed by the petitioner to an application of the respondent seeking vacation of stay granted vide order dated 22.04.2022, read as under:-

"8. In light of the ongoing investigation, it has already come to the knowledge of Petitioner that respondent and his family is having some properties outside India including USA. Therefore, allowing Respondent to move outside India shall be detrimental to the investigation of his Directorate. Further, there are statements on record and documents to prove that the respondent owns properties in the U.S.A., the details of the same are not being disclosed as further investigation with respect to the same is ongoing. However, the same can be shown to this Hon'ble Court, if so directed.

9. That, the respondent is already an accused in other investigations of predicate offence related to Ponzi scam amounting to approximately Rs.1900 Crores and there is every likelihood that this scam is even bigger than the estimated amount. Therefore, allowing the accused would be against the public interest owing to possibility of him liquidate/dispose off the laundered assets. Moreover, a flight risk could also not be denied looking into the backdrop and size of scam.

10. That further, Sh.Gurjeet Singh, brother of the respondent, who is a resident of U.S.A. had filed an Anticipatory Bail application alleging that Kanwar Deep Singh is threatening him that he will get him arrested if he comes to India. Sh.Gurjeet Singh is the Ex-Director of the accused company i.e. Alchemist Limited.

11. that the past conduct of the accused with respect to influencing witnesses is evident from the following extract of the prosecution complaint filed by the ED against him:

"5.1....Further, Directors of companies of Alchemist Group during statement u/s 50 PMLA, 2002 stated that Kanwar Deep Singh stopped them to appear before this Directorate on summons. Charan Deep Singh Jolly, Ex-Director of Alchemist Township India Limited also stated in his statement that Kanwar Deep Singh threatened him when he appeared before this Directorate. Sucheta Khemka, Director of Alchemist Township India Limited also in her statement stated that she could not produce the document sought in summons because Kanwar Deep Singh directed other employees of the Alchemist Group not to provide her with the documents. Therefore, Kanwar Deep Singh influenced Directors of accused companies not to

cooperate in the ongoing investigations.""

4. The statements were recorded under Section 50 of various directors one of whom stated the petitioner has a Mansion in Malibu, America and further details of assets of the petitioner in Chicago and his relationship with M/s.Phoenix Hotels are also detained. It was stated by Mr.Gurjeet Singh, his brother that petitioner has three hotels, two of them in Phoenix viz. Sheraton and Fourpoint and one in Chicago viz. Holiday Inn, near Six Flags in Gurnee and he also owns a night club in Chicago and two night clubs in Wisconsin and a mansion in Malibu.

5. Reference is also made to an order dated 22.04.2022 passed by this Court as under:

"4. It the submission of the learned counsel for the petitioner the respondent herein is facing investigation for the offence under Section 3 of the Prevention of the Money Laundering Act (hereinafter referred as PMLA) and he is the Chairman Emeritus of Alchemist Group of companies and is a sole controller of funds raised from the investors and its further diversion in other group companies for his own benefits. It is further submitted the information shared by the Income Tax Department received from Singapore tax authorities clearly reflects his association with various entities and having assets in the form of insurance policies purchased from the proceeds of the crime parked in high seas trading and his denial despite evidence to the contrary. It is alleged the facts of the case do show it is the case of corporate deal to find out the respondent and his family members are the actual beneficiaries of the crime proceeds laundered in this case through the accused companies. The allegations are also he took systemic exist from the companies which received the funds by siphoning, but all administrative and financial activities are still managed and controlled by the respondent. It is stated the respondent has committed offence through various companies and committed the fraud of approximately Rs.1900 Crores. It is the submission of the learned counsel for the petitioner despite considering all the above averments, the learned Trial Court in a mechanical manner has granted the permission to respondent to visit abroad whereas further investigation is pending at the crucial stage and there is every possibility of his fleeing from rigors of law. He has also referred to an anticipatory bail application of his brother namely Gurjeet Singh wherein it is alleged the respondent herein has been threatened by respondent. Similar apprehension were raised by the other directors of companies whom the respondent had threatened not to cooperate with the investigating agency.

5. It is stated he has already purchased huge properties in USA and there is every possibility he may not return to India to join further investigation and hence, he should not be allowed to visit abroad on the pretext of treatment of prostate cancer."

6. The learned counsel for the Department referred to annexure-1 to the reply aforesaid wherein they sought a query from AIIMS Hospital, Delhi qua treatment of prostate cancer and it is as under:

"Opinion:

Respected Sir, Thank you for referring this case. We have reviewed the documents and reports attached. In this regards following is our opinion.

1. Yes, sufficient treatment and surgery facilities of Prostate Cancer are available in India.
2. The Standard treatment for Prostate cancer is similar in India and USA.
3. Surgery for Prostate Cancer can not be done without removal of organ.

However, if a patient with Prostate Cancer doesn't want surgery, he can be treated with medical and radiation treatment. Such treatment is available in India."

7. Further he referred to various medical documents to show Cryoablation Therapy which is sought for by the petitioner herein to treat the cancer at an early stage of disease being available in our country at various hospitals including Artemis Hospital, Gurugram; AIIMS, Delhi; Medanta, The Medicity, Gurugram; Aster Medicity, Kerala; Indraprastha Apollo Hospital and various other hospitals including at Chandigarh and at Max Super Speciality Hospital, Saket.

8. Certain documents viz. chats are also shown to me of investors who had deposited their hard earned life savings with respondent's group companies have suffered hard financial crisis, having no money for their own treatment and of their near ones and some of them are dying of diseases, hence, it is argued the petitioner cannot be allowed to go abroad only to get a treatment which rather is available in India, especially when his creditors have no money for their own treatment.

9. The learned senior counsel for the respondent on the other hand has referred to following judgments to show on medical grounds the accused, even in ED cases, have been allowed to go abroad.

10. In Miss Marie Andre Leclerc vs. State (Delhi Administration) (1984) 2 SCC 443 the Court held:

"2. We are, therefore, of the view that on humanitarian grounds it is desirable that the petitioner should be permitted to go to Canada which is her home country and where she has her parents and relatives so that she can receive proper treatment and her relations can be by her side. It is also true that the petitioner can obtain treatment for cancer in India as there are facilities for such a treatment but then chemotherapy has to be given as recommended by Dr. Telang. It will be desirable that the parents and other relations of the petitioner in view of the petitioner's state of health are present when chemotherapy is given because it is known that there are cases where chemotherapy has other adverse effects. We would, therefore, permit the petitioner to go to Canada for a period of one year. But at the same time we have to protect the interests of justice because the petitioner is suffering a sentence of life imprisonment for the offence of murder in one case and there two other cases pending against her-one in the state of U.P. and the other in the State of Karnataka. We would,

therefore, direct that the petitioner be allowed to go to Canada on condition that she files an undertaking in the form of an affidavit to this Court to return to India within one year from the date of her departure from this country. We are informed that the petitioner is on bail in cases which are pending against her in the state of U.P. and the State of Karnataka and as a security for appearance in Courts there lies deposited a sum of Rs. one lakh in the Sessions Court, Varanasi, Rs. 40,000/- in the Court of the Chief Judicial Magistrate, Agra and Rs. 10,000/- in the Court of Judicial Magistrate, Karwad. These three amounts, aggregating to Rs. 1,50,000/- (One lakh and fifty thousand rupees) will also remain as security for the return of the petitioner to India within one year from the date of her departure and in addition personal bonds will be given by Father Allain and Sister Margarete in favour of the Registrar (Judicial Administration) of this Court-each bond being for a sum of Rs. 1,50,000/- within one week from today and only after such bonds are given, the petitioner will be entitled to leave India. Father Allain and Sister Margarete are present in court and they have given their consent to this arrangement as security for the petitioner's return to India after one year. xxxxx"

11. Further in Manoj Kumar Babulal Punamiya vs. State of Jharkhand through Directorate of Enforcement in SLP (Crl.) 4516/2012, the Court held as under:

"The petitioner/applicant is facing trial under the Money Laundering Act and the trial is in progress. Since the petitioner/ applicant is suffering from a serious ailment and the Stem Cell therapy to treat the aforesaid disease is not available in our country, we permit the petitioner/applicant to go to Singapore where the said Stem Cell therapy is available with the following conditions:

1. to 7. xxxx

12. In Manoj Kumar Babulal Punamiya (supra) the stem cell treatment was not available in India, and whereas in Miss Marie Andre (supra), she was allowed to take treatment of Cancer in Canada as all her family members were stationed there, which is not the case here. The treatment sought for is very much available in India and all his family members are also in India, hence considering the allegations against him and the apprehension during investigation he may not dispose of or otherwise deal with properties in USA to the detriment of investigating agency or he may not return; no indulgence can be given to respondent and hence this application is dismissed.

13. In view of above, the impugned order passed by the learned Trial Court is set aside. The petition stands allowed. Pending application, if any, also stands disposed of.

14. The earlier date fixed stands cancelled.

YOGESH KHANNA, J.

MAY 24, 2022/DU