

GAHC010061152024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/285/2024

AVINASH BHARTIA AND ANR.
S/O- RAMAWATAR BHARTIA,
PERMANENT R/O- FLAT NO-09- A, BLOCK C,
SIGNATURE ESTATES, B.K KAKATI ROAD, ULUBARI,P.O- ULUBARI,
P.S- PALTANBAZAR, GUWAHATI, DIST- KAMRUP (M), ASSAM, PIN-781007

2: PAWAN KUMAR BHARTIA
S/O- RAMAWATAR BHARTIA

PERMANENT R/O- FLAT NO-09- A
BLOCK C

SIGNATURE ESTATES
B.K KAKATI ROAD
ULUBARI
P.O- ULUBARI

P.S- PALTANBAZAR
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-78100

VERSUS

THE UNION OF INDIA,
REP. BY THE PP, CBI

Advocate for the Petitioner : MR. M PHUKAN

Advocate for the Respondent : SC, C B I

Linked Case : Bail Appln./3209/2023

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THE UNION OF INDIA
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Advocate for : MR. K K DUTTA
Advocate for : SC
CBI appearing for THE UNION OF INDIA

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 24.04.2024

Heard Mr. D. Saikia, learned Senior counsel assisted by Mr. M. Phukan, learned counsel for the applicants. Also heard Mr. M. Haloi, learned Standing counsel, CBI.

2. This interlocutory application has been preferred by the applicants praying for modification/relaxation of bail conditions imposed in the order dated 19/09/2023 passed by this Court in Bail Application No. 3209/2023.

3. The applicants were granted bail vide order dated 19/09/2023, passed in Bail Application No. 3209/2023 subject to certain conditions and one of the conditions was vide condition No. (V), "that the accused/applicants shall deposit their original passports in the court of learned Special Judge, CBI, Assam." In pursuant to the bail condition the applicants had deposited their passports to the Special Judge, CBI. Now the applicants are desirous of travelling to abroad as a result of which such passports are required. Hence, this petition.

4. It was urged by learned counsel for the applicants that a meeting was scheduled to be held with a Sinara Group- a leading manufacturer of Russian Railway equipment in the month of March, 2024 at Moscow, Russia in regard to which application process for VISA has already commenced.

5. It is further submitted that the applicants are required to visit abroad, as the son of the applicant No. 1 is pursuing his higher studies in the United Kingdom and the daughter of the applicant No. 2 has applied for her Bachelor course in USA. In order for the applicant No. 1 to visit his son and for the applicant No. 2 to facilitate the admission procedure for his daughter, there is an urgent requirement that their respective passport be released.

6. Learned counsel for the applicants also has contended that the investigation of the case is already over and charge-sheet has been laid. The applicants have an established business and even if the condition be relaxed by handing over the original passports, there should not be any apprehension that they may flee away from the jurisdiction of the court.

In support of his submission, learned counsel has placed reliance on the following case laws -

- a. (2020) 10 SCC 77 (Parvez Noordin Lokhandwalla vs. State of Maharashtra and another)
- b. (2018) SCC Online P&H 5279 (Captain Anila Bhatia vs. State of Haryana)
- c. AIR 2008 SC 1414 (Suresh Nanda vs. CBI)

7. On the other hand, learned Standing counsel CBI filed an objection against the prayer of the applicants by stating that the accused /applicants had neither submitted any itinerary regarding their travel nor specified any complete address where they want to visit in United Kingdom. In the absence of any genuine reason to travel, proper itinerary and complete correct address, accused/applicants cannot be allowed to travel abroad.

8. It is further argued that if the passports of the applicants are

released, in that event there is reasonable apprehension that they may flee from the jurisdiction of the trial court to any other country with whom India has no extradition treaty and trial of the case may be hampered unnecessarily. Accordingly, learned Standing counsel CBI has prayed for dismissal of the prayer of the applicants for modification of the condition imposed by this Court in Bail Application No. 3209/2023.

9. The applicant No. 2 has filed an additional affidavit by stating that the graduation ceremony of his daughter Priyanshi Bhartia, which is going to be held on 13/05/2024, at Emory University at Atlanta, Georgia, USA. In order to attend the said event, the parents of the students are invited, who will be participating in the said ceremony. In support of the fact, the applicant No. 2 has submitted two documents – one appears to be entry pass and the other is invitation letter. From the documents submitted by applicant No.2, it cannot be ascertained whether the daughter of applicant No. 2 is/or was the student of Emory University and has obtained graduation from the said University. From the documents, it is also not reflected in which year she has been enrolled in the said University.

10. Regarding applicant No. 1, it is submitted that his son is pursuing higher studies in United Kingdom but in the petition, it is not disclosed in which University the son of the applicant No. 1 is pursuing his higher studies.

11. For the purpose of business development and discussion with Sinara Group of Moscow, the applicants have not filed any document or agreement between the parties that they are required to be present immediately for negotiation with the officials of Sinara Group, Russia.

12. In the case of Suresh Nanda (Supra), it has been held that in a case of impounding of passport, resort should be taken to Section 10(3)(a) of the Passport Act, which specifically deals with impounding of passport and not section 104 Cr.P.C., which allows a court to impound a document or a thing produced before it. It was also held that Passport Act is a special Act and it would override the provisions of Cr.P.C. for the purpose of impounding of passport.

13. The other judgments submitted by the learned counsel for the applicants, in the said cases also the passport was seized during investigation and subsequently on the prayer of the accused, the same was directed to be handed over to him. But in the case in hand, the position is something different, wherein there was no seizure of passport, but this Court while granting bail to the applicants imposed a restriction to deposit their passport before the trial court.

14. Since criminal proceedings are pending against the applicants, the apprehension of the respondent/CBI that they would abscond and not be available for trial also requires to be considered. Fleeing justice or thwarting the course of justice would undermine the majesty of the law, wherefore to strike a balance between the rights of the applicants and the course of justice, this court deems it appropriate to pass the following order –

- a. The applicants are at liberty to move a specific application for release of their passport before the trial court along with sufficient documentary evidence.
- b. In case, such an application is moved, the trial court is directed to consider the application and return the passport after

considering the relevant documents for their necessity to travel abroad.

c. The learned trial court will allow the same with reasons to be recorded. It is also directed that the applicants shall furnish an undertaking in writing before the trial court to that effect.

15. With the aforesaid observation, this interlocutory application is disposed of.

JUDGE

Comparing Assistant