

ED Vs. Jagmohan Kejriwal
CT No. 11/2020
ECIR/10/DLZO-I/2017
CNR No. DLCT11-000286-2020

22.05.2023

This is an application filed on behalf of A-16 Rishabh Jhunjhunwala seeking modification of condition no. 1 imposed vide order dt. 24.11.2021 while granting bail to the applicant.

Present: Sh. Arun Khatri, Ld. Special Counsel for ED/prosecution (through VC).
Sh. Madhav Khurana, Ld. Counsel for A-16 Rishabh Jhunjhunwala.

Reply filed. Copy supplied.

Arguments heard.

To come up for orders at 3.00 pm.

(Rakesh Kumar-III)
Special Judge (PC Act) (CBI)-02
Rouse Avenue District Court
New Delhi/19.05.2023

At 3.00 pm.

Present : Sh. Madhav Khurana, Ld. Counsel for A-16 Rishabh Jhunjhunwala.

- : : O R D E R : : -

1. This is an application filed on behalf of accused no. 16 Rishabh Jhunjhunwala seeking modification of condition no. 1 imposed vide order dt. 24.11.2021 while granting bail to the applicant/accused.

2. It is stated that the applicant/accused no. 16 Rishabh Jhunjhunwala was granted bail by the Ld. Predecessor of this court vide order dt. 24.11.2021 subject to certain conditions, one of which was that the applicant/accused shall not leave the country without prior permission of the court. It is stated that the applicant is a citizen of India and holds an Indian Passport, however, since the year 2017, he along with his family comprising of his wife, minor son and aged parents resides in Singapore. It is further stated that the applicant is a commodity trader, who is involved in purchase of raw material locally and arranging transportation and shipping for the same.

3. It is further stated that the applicant is employed in Singapore for gain and holds a Long Term Pass Holder (LTPH), which is granted to a person who is employed in Singapore and resides there. It is further stated that the applicant's wife and son have a dependent visa, which is predicated on the applicant's LTPH. It is further stated that if the applicant's LTPH is revoked owing to his work being affected due to his prolonged presence in India, not only the applicant, but his entire family would have their visas revoked.

4. It is further stated that this Court on various previous occasions had allowed the applicant to travel abroad including Singapore and various other countries from time to time subject to various conditions which were duly complied with by the applicant/accused and with all the conditions imposed by this Court and never violated any of the said conditions.

5. In support of his contentions, the applicant has relied upon the documents viz. Copies of his family's Long Term Passes, Tenancy Agreement, Electricity, Gas, Water and Telephone bills.

6. It is further stated that the applicant while being granted permission to travel abroad has already furnished an FDR of Rs. 35,00,000/- (Rs. Thirty Five Lakhs) with one surety bond of Rs. 20,00,000/- (Rs. Twenty Lakhs), which is on the record. It is stated that the proceeds of crime attributed to the applicant/accused as per para 12 of the complaint is only Rs.28,44,960/-, which has already been secured by the complainant/ED by attaching the commercial property of the applicant/accused situated at Maidawas, Sector-66, Gurugram, Complex Name – M3M Cosmopolitan, Unit no. COS/C/Office/11, 3rd floor.

7. It is further stated that there is no likelihood of the applicant fleeing, as he has already submitted himself to the jurisdiction of this Court. It has been added orally that since the nature of job in which the applicant is involved, he is frequently required to travel to different countries and sometimes such travels are not even preplanned and the requirement of travels arise on the eleventh hour. It is stated that in view of the conditions imposed vide the bail order, the applicant/accused is required to take permission of the court everytime he travels abroad which causes him great hardship and also wastes precious judicial time.

8. In support of his contentions, Ld. Counsel for the applicant/accused has relied upon the following judgments :-

- (i) *G. Vetrivel Sami @ Swami vs. CBI reported in 2012 SCC OnLine Del 1656*
- (ii) *Parvez Noordin Lokhandwala Vs. State of Maharashtra and Anr. Reported in (2020) 10 SCC 77.*
- (iii) *Chenhsuiyun Vs. Directorate of Revenue Intelligence reported in 2021 SCCOnline Del 3241*
- (iv) *Gian Singh vs. State of Rajasthan reported in (1999) 5 SCC 694.*
- (v) *Shri Chandramauli Prasad & Ors. Vs. State of Delhi reported in ILR (2009) II Delhi 48.*
- (vi) *Bina K. Ramani vs. State, 2010 (115) DRJ 650*
- (vii) *Maneka Gandhi v. UOI, AIR 1978 SC 597.*

9. It is, therefore, prayed that the condition imposed vide bail order dt. 24.11.2021 may be modified to the extent that the applicant/accused Rishabh Jhunjunwala shall not leave the country (India) without informing the court.

10. Reply to this application has been filed on behalf of ED, whereby they have strongly opposed the prayer of modification in the bail order dt. 24.11.2021. Besides reiterating the allegations/accusations levelled in the complaint, it has been stated that admittedly, the applicant/accused has remained out of India and has travelled to various countries since the date of his bail on one pretext or the other, without furnishing any evidence w.r.t. purposes of such visits and the outcomes thereof. It has further been stated that the applicant/accused is involved in serious offences having grave bearing on the society at large and

his travel abroad may cause disruption to the effective disposal of justice and there is every likelihood that he may abscond from the clutches of law. It is added that the modification of the bail order would be prejudicial in the interest of justice.

11. I have gone through the rival contentions and have perused the record.

12. Perusal of the record reveals that in the instant case, applicant/accused Rishabh Jhunjhunwala has been permitted to travel abroad on several occasions subject to various conditions which were duly fulfilled and on no occasion such conditions were misused by the applicant/accused. The applicant/accused has been regularly appearing before the court either in person or through counsel. It has never been disputed by the complainant/ED that the applicant is a permanent resident of Singapore or that he works for gain there. It has also not been disputed that the applicant/accused is not required to frequently travel to different countries in connection with his job.

13. Though the respondent/ED has objected to the prayer made in the application on the ground that the applicant/accused has never produced before the court the evidence of purposes of his visits to various countries and the results of those travels, however, as a matter of record, on all the occasions, the applicant/accused has clearly mentioned in the applications, the purposes of his visits to various countries and had also furnished the proves thereof. In fact, on the contrary, the ED has never been able to furnish anything on record to suggest

that the applicant/accused had manipulated his reasons of travel abroad or that his actual purposes of visits were something else. So far as the question of the accused fleeing from justice is concerned, it is a matter of record that the applicant/accused is a resident of Singapore since very beginning and even at the time of filing of the complaint by the ED, he was residing at Singapore and it was only upon being summoned by the court that he appeared before court. Admittedly, the applicant joined investigation with the ED also after coming from Singapore and at no point of time, before filing of the complaint, the complainant/ED made any efforts for opening of LOC in respect of the applicant/accused.

14. Hon'ble Delhi High Court in case titled **G. Vetrivel Sami @ Swami (supra)** has held as under :-

7. There is no dispute that the petitioner is facing trial in a serious non-bailable offence and that, the Court while exercising discretion to enlarge the accused on bail could impose such conditions as may be deemed fit and appropriate in the given facts and circumstances. The petitioner at the time of his release on bail on 3rd June, 2006 was engaged in travel and tour business in different countries. The court while exercising its discretion is, granting bail imposed the aforesaid conditions. Invariably, the courts do impose some conditions with the objective to ensure not only the fair investigation and trial, but that the accused does not flee from the process of law or tamper with the evidence. It is towards this that in appropriate cases, the accused is also directed to surrender his passport or not to

undertake travel abroad without the permission of the court. While Imposing any condition at the time of grant of bail, the courts are guided by various factors such as the nature of offence, the status of the accused, his financial condition, his roots in society, his frequency of travelling, his proximity with the witnesses, his contacts here and abroad and propensity to commit offences etc. These are only illustrative and list of such guiding factors cannot be exhaustive. At the same time, the court has to be mindful of the fact that any such condition has to be imposed keeping in view the fundamental right of personal liberty of a person. The conditions which should be imposed must be workable, practical and reasonable and should not be harsh, vindictive and undue infringing personal liberty of a person. The overall object of the imposing such condition has to be kept in mind that is to ensure the submission of the accused to the process of law and not to try to: cause any hindrance in the fair trial. It is reiterated that this will all depend upon the wisdom of the judge and the facts and circumstances of each case. There cannot be any straight jacket guideline in this regard.

8. In the given facts and circumstances, when the petitioner has already travelled abroad several times, now the mere fact of the seriousness or the gravity of the offence alone may not be enough to decline permission to travel abroad. In the present case, the accused was permitted to travel abroad four times and every time, he complied with the conditions imposed by the Trial Court. Of course, he was also denied to travel abroad on two occasions as the Trial Judge did not think it appropriate to exercise discretion at that point of time. It is not that the discretion exercised at that time was

arbitrary or non-judicious. The time at which such a discretion is sought to be exercised is also an important factor of relevance. It is noticed that every time, when permission was granted to the petitioner to travel abroad, he submitted FDR of Rs. 1 lakh to be kept alive during the travel period and also NOCs from the sureties. One of his surety is none else but his wife, who is a permanent employee of Delhi Government for the last 19 years. Furnishing FDR and obtaining NOCS at every time on the occasion of visit abroad may be reasonable at one point of time, but then, the same can become onerous and harsh at another point of time. In the given set of system, it may also involve mental torture and running around.

9. The petitioner stated having started his consultancy business with CIS countries and so, he would be required to travel abroad frequently. Though, he has travelled abroad only about four times in five years, but, that was presumably because of onerous conditions and the reason of petitioner having stopped his business of travel and tours. In the given facts and circumstances, I am of the view that the petitioner is now entitled to enjoy personal liberty without seeking permission from the court every time under onerous and harsh conditions. In the entire factual matrix, I am inclined to modify the conditions of bail so as to ensure the fair trial and also submission of the petitioner to the process of law. Accordingly, the first and second conditions imposed vide order dated 03 June, 2006 are modified and substituted as under:

(1) The petitioner shall not leave the country without informing the Trial Court a week in advance of his visiting abroad and shall furnish the complete itinerary stating the

country/countries, which he intends to visit and the period of his stay as also the addresses where he would be staying and his contact numbers. He shall also inform the Trial Court in writing about his return to India within a week thereof. Further, he shall not travel abroad during the period when the case is listed for evidence and his presence is required, unless already dispensed.

(2) While intending to go abroad, he shall furnish a bank guarantee or FDR of Rs. 5 lakhs in the Trial Court, which shall be kept alive till the period he returns and informs the court.

10. Rest of the conditions of the order dated 03 June, 2006 shall remain unaltered.

The liberty is also granted to the respondent/CBI to get this order revoked in the event of the petitioner failing to comply with these modified conditions at any point of time during the trial.

15. In fact a copy of this order was also directed to be circulated amongst the judicial officers of District Judiciary.

16. In **Maneka Gandhi vs. UOI, AIR 1978 SC 597**, it has been held by the Hon'ble Apex Court that under Article 21, the procedure established by law must be just, fair and reasonable through which life or personal liberty is taken away. If this is permitted to be done, then it will be simply putting a premium on the inaptness or callous attitude of the Investigating Agency and also working to the detriment of the fundamental right of an under trial who may be enlarged on bail. The purpose of imposition of such a condition as has already been stated hereinbefore, is to ensure that the accused must submit herself to

the processes of law. The said purpose can be secured by modifying the said condition of surrendering the passport and obtaining the permission from the court by requiring the accused to either furnish some title deed of an immovable property to the court to ensure that she does not flee from the processes of law or by imposing some additional conditions.

17. Having heard the rival contentions and considering the observations made by the Hon'ble Delhi High Court in G.Ventrivel Sami vs. CBI (Supra), as reproduced above, I am of the view that no prejudice is likely to be caused to the case of the complainant, in case this application is allowed and the conditions mentioned in the bail order 24.11.2021 are modified and substituted.

18. In view of the above, the bail order dt. 24.11.2021 stands modified to the extent that in paragraph 9, the condition no. (i) shall be read as under :-

(i) The applicant/accused shall not leave the country (India/Singapore) without intimating this court three days in advance of his travelling abroad, subject to following conditions:-

(a) Such intimation must be accompanied with complete itinerary stating the country/countries, intended to visit and the period of his stay therein alongwith his addresses, telephone numbers, mobile numbers and email IDs during the said

travels.

(b) This shall further be subject to his furnishing on record security in the form of FDR/bank guarantee for a sum of Rs. 35 Lakhs (Thirty Five Lakhs only) in the name of Court i.e. Ld. Principal District & Sessions Judge-cum-Special Judge, CBI, (PC Act), Rouse Avenue District Courts, New Delhi (which shall be kept alive till further orders) along with one surety bond of Rs. 20 Lakhs (Twenty Lakhs only) to the satisfaction of Court.

(c) It is made clear that the applicant/accused shall appear before this court or the investigating agency, in person, as and when directed/called for specifically.

(d) His surety/Ld. Counsel will undertake to accept notice(s), if any, on behalf of the accused during his stay abroad.

(e) The applicant/accused shall not create any third party interest in any of his immovable properties situated in India or abroad without permission of the court during the period of his stay abroad.

(f) In case any of the above conditions are violated, the bank guarantee/FDR/surety bond shall be forfeited to the State.

The FDR of rupees thirty five lacs is stated to be already on record. Let fresh surety bonds be furnished in terms of the modified conditions.

19. With the above observations, the application stands disposed off. The remaining conditions imposed vide order dt. 24.11.2021 shall remain the same. Further the complainant/ED is at liberty to get this order revoked in the event of the applicant failing to comply with the directions given by way of this order or the order dt. 24.11.2021.

20. To come up on the date already fixed i.e. **22.08.2023**.

(Rakesh Kumar-III)
Special Judge (PC Act) (CBI)-02
Rouse Avenue District Court
New Delhi/22.05.2023