

**IN THE COURT OF THE SPECIAL JUDGE (SPE/CBI)-I
(SPECIAL COURT UNDER PREVENTION OF MONEY
LAUNDERING ACT, 2002)**

ERNAKULAM

Present :-

Sri. Anil.K.Bhaskar, Special Judge (SPE/CBI) – I, Ernakulam

Monday the 18th day of October, 2021 / 26th Aswina 1943.

Crl. M.P. No.1350/2021

In

SC No.533/2018

Petitioner/Accused No.1:

Martin, aged 59 years, S/o. Santiago, 135/1,
Thiruvalluvar Street, Vellakinar Road, G.N.
Mills Post, Coimbatore- 641 029.

**By Advs. Sri. A.Kumar and
Sri. P.S. Sreepasad.**

Counter Petitioner/Complainant:

Directorate of Enforcement

**Represented by Govindu.P. Renuka Devi,
Special Public Prosecutor, PMLA for
Directorate of Enforcement.**

This Criminal MP coming on for hearing before me on 18.10.2021 and the Court on the same day passed the following:

ORDER

1. This is an application filed by the petitioner/first accused seeking permission to travel abroad and renew his passport for the said purpose for a period of five years.

2. Cognizance in this case was taken on the basis of the complaint filed by Enforcement Directorate. The offences alleged against the petitioner are under Section 3 and 4 of the PMLA Act, 2002. Upon appearance the petitioner was

enlarged on bail on 14.09.2018. In predicate case (C.C.No.218/2015) the petitioner was released on bail on conditions, inter alia, that he shall surrender his passport. Accordingly, he surrendered his passport before the Chief Judicial Magistrate Court. Thereafter, as per the order in CMP No.980/2016 dated 28th March 2016, the passport was given back to the petitioner on condition that he shall surrender the same as and when specifically directed by the court. The passport is now with the petitioner.

3. When the passport was about to expire on 20.11.2018, the petitioner initially filed an application before the Regional Passport Officer, Coimbatore for renewal of his passport. The passport authority rejected the said application. The petitioner challenged the said order before the Hon'ble High Court of Madras, by filing WP(C) No.20976/2017. The Hon'ble High Court of Madras as per order dated 10.09.2018 set aside the order passed by the Regional Passport Officer, Coimbatore and directed the petitioner to approach the passport authority by filing an application seeking issuance of passport with details of Criminal Cases pending against him and also with the order/permission obtained from the trial court. In view of the said order, petitioner filed separate applications in this case as well as in predicate case (C.C.No.218/2015) seeking permission of the court for the renewal of his passport and to travel abroad. Crl.M.C. No.2487/2018 was filed in this case and Crl.M.P. No.2476/2018 was filed in C.C.No.218/2015. In both cases the petitioner was given permission to renew his passport for a period of three years with permission to leave the country during the said period subject to the conditions imposed by the respective courts. Accordingly he moved application before the

Regional Passport authority, Coimbatore and got his passport renewed. The renewed passport expires on 08.11.2021.

4. Now comes the present petition seeking permission for renewal of the passport for a further period of three years and to permit him to travel abroad during the said period.

5. It is to be mentioned that a similar application (CrI.M.P. No.1260/2021) was filed before the Chief Judicial Magistrate, Ernakulam wherein the predicate case C.C.No.218/2015 is pending. The learned Chief Judicial Magistrate by its order dated 31.08.2021 was pleased to grant permission to the petitioner to renew his passport for a period of two years and to permit him to travel abroad during the above period subject to the conditions imposed in the said order.

6. In the present petition, the petitioner would submit that the petitioner has got a permanent place of residence at Coimbatore and is permanently residing there with his wife and children. The petitioner has got various business establishments, and commercial complexes deriving rent within the country. The petitioner is a regular tax payer and making payment of substantial amount towards income tax in each year. The petitioner will not permanently stay abroad, he will visit foreign countries temporarily only for his business and other purposes. The petitioner has got wide business interests in India and derives income from India. It is pointed out that if an order/permission to travel is not given to the petitioner, it will prejudicially affect his legal rights and interest, and cause immense hardship and irreparable injury to him.

7. The respondent/Enforcement Directorate vehemently opposed the

present application mainly for one reason. It is submitted that the investigation by the Directorate of Enforcement against this petitioner and his accomplices have not been completed on various aspects and on to the proceeds of crime and the other laundered or being laundered properties, other than those mentioned in the Complaint in S.C.No.533/2018. Further investigation is going on. Three provisional attachment orders were issued for attachment of various properties worth ₹258.52 Crores. It will take up the total proceeds of the crime to ₹910 Crores. The details of the three provisional attachment orders are given as follows:

S.No.	PAO No.	PAO Date	PAO issued in the name of	PAO Value
1	02/2016/KCZO	31.03.2016	Shi. Santiago Martin and his Companies	₹ 122 Crores
2	02/2017/KCZO	09.02.2017	Shri.N.Jayamurugan and his Companies	₹16 Crores
3	02/2019/KCZO	22.07.2019	Shri. Santiago Martin and his Companies	₹119.59 Crores

8. In the process of further investigation to trace out the proceeds of the crime various summons were issued to the petitioner to appear before the Enforcement Directorate to give statement under Section 50 of PMLA Act and to produce documents. Summons were issued to appear on 23.02.2021, 03.03.2021, 24.03.2021, 15.06.2021 and 29.07.2021. The summons dated 29.07.2021 was issued to the petitioner to appear in person on 24.08.2021. Instead of personally appearing before the investigating officer he authorised another person to tender statement on his behalf. All these will go to show that the petitioner is reluctant in co-operating with further investigation. In this circumstance, it is genuinely apprehended that, if permission is given to the petitioner to leave India, there is

every possibility that he will abscond and tamper with the evidence.

9. The above case was pending before the Principle Sessions Court, Ernakulam the then designated Special Court under Prevention of Money Laundering Act, 2002 and the present petition was filed before that court. As per the extra ordinary gazette notification No.1531 issued by Ministry of Finance, Government of India, this court was notified as one among the Special Courts to try the offences punishable under PMLA Act, 2002. In view of the said notification the above case together with the present application was transferred to this court for disposal. As such the above petition came up for consideration before this court.

10. The petition came up for hearing before this court on 29.09.2021. The learned counsel for petitioner submitted that, the petitioner being a business man having business interest overseas, has to go abroad to attend business meetings frequently. He had never violated any of the terms in the bail condition. He is fully co-operating with the enforcement agency in the ongoing further investigation. He is ready to abide whatever conditions to be imposed by the court. The petitioner already produced all the documents summoned by the Enforcement Directorate. His agent appeared before the investigating authority and gave statement. On earlier occasions he had personally appeared and gave statement before the authority. There is absolutely no reason to deny permission to the petitioner in renewing his passport which is about to expire on 08.11.2021.

11. On the other hand the learned Special Prosecutor would submit that, inspite of repeated summons issued by the Enforcement Directorate, the petitioner herein failed to appear and to give statement under Section 50 of PMLA Act. He is

not at all co-operating with the further investigation which is going on and only because of his non-cooperation the Enforcement Directorate was not able to complete the investigation and file report before the court. Since the Directorate of Enforcement is about to issue fresh summons to the petitioner, the learned Prosecutor sought an adjournment for hearing this petition. The said request was allowed and further hearing of the petition was adjourned to 07.10.2021.

12. When the petition came up hearing on 07.10.2021, the learned Special Public Prosecutor filed an additional statement stating that a summons was issued on 30.09.2021 to the petitioner to appear in person on 13.10.2021 and the same was served on him by speed post and email. A scanned copy of the summons is enclosed with the additional statement.

13. Both sides were heard in detail.

14. Learned counsel for the petitioner addressed the court mainly on the legal issues. At first it is submitted that permission of the court is required only for the issuance of a new passport/fresh travel document. In other words, it is submitted that, there is no provision of law which mandates that the renewal of a passport can be refused on the ground of pendency of criminal trial and / or warrant/summons for appearance or arrest issued by a court of law. To substantiate his contention, the learned counsel relied upon the decisions of Hon'ble Supreme Court mentioned hereunder.

1) AIR 1967 SC 1836 Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi and Others, 2) 2008 (3) SCC 674 Suresh Nada v. Central Bureau of Investigation, 3) (2019) 265

DLT 614 Ashok Khanna v. Central Bureau of Investigation, 4) Judgment date 01.10.2020 Writ Petition No.9141/2020 Mr.Krisna Chiranjeevi Rao Palukuri Venkata v. The Union of India, 2018 SCC Online Mad 857 Ashok Giri v. State of Tamil Nadu and others, 1978(1) SCC 248 Maneka Gandhi v. Union of India.

15. Secondly, pendency of the summons issued by the investigating agency is not a ground for refusal to renew a passport.

16. Thirdly, the petitioner has, at all times complied with all conditions laid by the court while ordering renewal of his passport in the year 2018.

17. Fourthly, the Enforcement Directorate's case cannot be superior to the case of the Central Bureau of Investigation and since the Central Bureau of Investigation has not opposed a similar application made by the petitioner before the Court of CJM, Ernakulam, it is not open for the Enforcement Directorate to oppose the present application.

18. Fifthly, the petitioner has always co-operated in the investigation being conducted by the Enforcement Directorate, and therefore, there is no merit in the contention of the Enforcement Directorate that the petitioner may take steps to abscond from the process of law and trial of pending cases against him in the event his passport is renewed.

19. Lastly there is a strong likelihood that the trial of the present case may take a long time to complete and denial of renewal of passport of the petitioner indefinitely, on grounds of pendency of the compliant and summons issued by the Enforcement Directorate, would not be proved at in the facts and circumstances of

the cases, and would result in breach of the fundamental rights of the petitioner.

20. The learned Public Prosecutor reiterated her stand that the petitioner who had continuously failed to appear before the Enforcement Directorate inspite of repeated summons, doesn't deserve an order from the court to renew his passport and to go abroad. His petition is only to be rejected especially since he was not able to give any assurance before this court that he will honour the summons issued by the Enforcement Directorate for his appearance on 13.10.2021.

21. After the conclusion of the hearing the petition was reserved for orders to 18.10.2021. As requested by the learned counsel for the petitioner, he was permitted to file written argument notes. The learned Special Public Prosecutor was asked to inform the court on or before the next hearing date, whether the petitioner had appeared before the Directorate of Enforcement in response to the summons issued to him.

22. When the case was taken up today it was informed by the learned Special Public Prosecutor that the petitioner failed to appear before the Directorate of Enforcement. In response to this submission learned counsel for the petitioner submitted that petitioner has sought two weeks time for appearance and it was not rejected by the Directorate of Enforcement.

23. Now I will go into the contentions taken up by the parties. At the outset, the first contention taken up by the petitioner cannot be entertained. At the initial stage, when his application for renewal was rejected by the Regional Passport Officer, Coimbatore, petitioner himself took the matter before the Hon'ble High

Court of Madras. In that proceedings the Hon'ble High Court made it clear that, for renewal, petitioner has to obtain the permission of the court wherein the criminal case against him is pending. Accordingly he had obtained permission from the court on earlier occasion, for renewal. Now he cannot come and say that permission is not at all required for renewal of the passport. Moreover notification issued by the Government of India as GSR 570 (E) dated 25.8.1993, mandates prior permission of the court for renewal of the passport. Clause 'C' makes it clear that for further renewal, fresh court order specifying a further period of the validity of the passport, or specifying a period of travel abroad is mandatory. On this point, out Hon'ble High Court in its recent decision in WP(C) No.15182 of 2021 dated 30.09.2021, in Para 13, held that Notification No. GSR 570 (E) dated 25.08.1993 is statutory in character and it has the force of law. In fact the petitioner himself had admitted its binding force in his petition and for that reason he sought the permission of the court for its renewal. Therefore the first contention is not sustainable.

24. Coming to the second contention, it is true that a criminal proceedings can said to be pending only when cognizance is taken and in the absence of a final report filed in court, a criminal case cannot be treated as pending. In other words mere registration of a crime doesn't invoke either Section 6 or Section 10 of the Passport Act. This is clear from the decision of our Hon'ble High Court which I referred earlier. But this principle cannot as such be made applicable to further investigation proceedings going on especially under PMLA Act, 2002. As per Section 23 where money laundering involves two or more connected transactions

and one or more such transactions is or are proved to be involved in money laundering, then for the purpose of adjudication, it shall be presumed that remaining transactions form part of a series of such inter-connected transactions. Here after the filing of the original complaint on its basis cognizance was taken, Enforcement Directorate was able to trace out some other transactions involving the petitioner and had issued provisional attachment orders against the petitioner and the last one is dated 22.07.2019. In order to proceed with further investigation to trace out the proceeds of the crime, the Directorate of Enforcement had issued repeated summons to the petitioner to personally appear so that the investigating officer can record statement under Section 50 of PMLA Act. Even if we go by the additional reply filed by the counsel for petitioner on 12.10.2021, the petitioner last appeared before the Enforcement Directorate on 18.01.2016. Thereafter he failed to appear before the Enforcement Directorate inspite of the repeated summons issued by the Directorate and received by him.

25. One of the contentions taken up by the petitioner is that, the petitioner has always co-operated in the investigation being conducted by the Enforcement Directorate and therefore, there is no merit in alleging that petitioner may take steps to abscond from the process of law initiated against him, in the event his passport is renewed. The words and acts of the petitioner is in utter mismatch. He got an opportunity to show his bonafides by appearing before the Directorate of Enforcement on 13.10.2021 in response to the summons issued, while this proceedings was pending, but he failed to honour it. This itself gives an indication that to secure his presence, it requires some coercive steps. His

assurance/undertakings cannot be taken on its face value.

26. Coming to the remaining contentions, it is true that so far he had not violated any of the bail conditions or the conditions laid down by the court while ordering renewal of his passport in the year 2018. It is also true that the Chief Judicial Magistrate, Ernakulam had recently granted permission to renew the passport of the petitioner considering the CBI case pending against him. It is also true that it takes long time for the completion of the trial in this case. But these factors by itself is not a ground to mechanically grant permission in this case, to renew the passport of the petitioner and to permit him to go abroad.

27. Our Hon'ble High Court in the decision cited earlier, observed "*while granting permission, the criminal courts will do well to bear in mind that the ultimate aim of granting permission is to balance the competent claim of fundamental right to travel abroad and the need to ensure the presence of the accused during trial*". As far as the present case is concerned, since further investigation is going on into other inter-connected transactions, this court has to ensure the presence of the accused not only during the trial of the case, but also during the investigation into the interconnected transactions which are all to be treated as part of the same series of transaction. Upon balancing the competing claims, it appears to me that, the petitioner who is continuously evading personal appearance before the Enforcement Directorate and thereby not co-operating with the on going further investigation into the inter-connected transactions, is not at all entitled to get permission from this court to travel abroad and to renew his passport for the said purpose.

In the result,

a) Petition stands dismissed.

b) It is made clear that the petitioner will be at liberty to file fresh petition after appearing before the Directorate of Enforcement in response to the summons issued to him as part of the ongoing further investigation proceedings.

Dictated to the Confidential Asst., typewritten by her directly to computer system, corrected and pronounced by me in open court on this the 18th day of October, 2021.

Sd/-
Anil K. Bhaskar
Special Judge (SPE/CBI)-I.

Appendix: Nil

Id/-
Special Judge (SPE/CBI)-I
(By Order)

//True Copy//

Sd/-
Sheristadar.