

**IN THE SPECIAL COURT FOR THE TRIAL OF PMLA CASES/
(SPECIAL COURT (SPE/CBI)-I), ERNAKULAM.**

Present: Sri. Anil.K. Bhaskar, Judge for PMLA Cases

Saturday the 26th day of November, 2022 / 5th Agrahayana 1944.

Crl. M.P. No. 52/2022

in

SC No. 533/2018

Petitioner/Accused No.1 : S. Martin, aged about 60 years, S/o. Santiago, 135/1, Thiruvalluvar Street, Vellakinar Road, G.N. Mills Post, Coimbatore- 641 209.

**By Adv. M/s. Mathews K. Uthuppachan,
A.Kumar, P.J. Anil Kumar and
P.S. Sreeprasad.**

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 26.11.2022 and the Court on the same day passed the following:

ORDER

1. This is an application filed by the petitioner/first accused seeking permission for renewal of his passport for five years and to travel abroad.
2. Notice served to the Respondent/Enforcement-directorate. The learned prosecutor filed written objections.
3. Cognizance, in this case, was taken based on the complaint filed by Enforcement Directorate. The offences alleged against the petitioner are under Sections 3 and 4 of the PMLA Act, 2002. The predicate case (C.C.No.218/2015) is pending before Chief Judicial Magistrate Court, Ernakulam. In both cases, the petitioner is on bail.

4. In 2018, when the passport of the petitioner was about to expire, he obtained orders from this court as well as from the court of Chief Judicial Magistrate, Ernakulam permission for the renewal of his passport and to travel abroad for a period of three years subject to the condition imposed by the respective courts. Accordingly, he got his passport renewed till 08.11.2021.

5. In 2021, when the passport was about to expire, the petitioner moved applications before this court (Crl.M.P.1350/2021) as well as CJM Court (Crl.M.P.1260/2021) for granting fresh permission to travel abroad and to renew the passport. The CJM Court granted permission by its order dated 31.08.2021 to renew the petitioner's passport for a period of two years and to travel abroad during the said period.

6. When the Crl.M.P.1350/2021 came up for consideration, it was brought to the notice of this court by the learned public prosecutor that, as part of the further investigation going on, Enforcement Directorate issued repeated summons to the petitioner to appear and give statement u/s.50 of PML Act, but the petitioner failed to appear and give statements and due to the non-co-operation of the petitioner the ongoing further investigation is getting prolonged. Being found that the petitioner is continuously evading personal appearance before the Enforcement Directorate and thereby not co-operating with the ongoing further investigation into the inter-connected transactions, this court denied permission to the petitioner to go abroad and to renew his passport by its order dated 18.10.2021. At the same time petitioner was given the liberty to file a fresh petition after appearing before the Directorate of Enforcement in response to the summons issued to him.

7. The petitioner challenged the said order before the Hon'ble High Court

in CrI. M.C. No.5569/2021. Hon'ble High Court dismissed the appeal making it clear that, it is open to the petitioner to move the trial court afresh after appearing before the investigating officer and co-operating with the investigation. The said order was passed by the Hon'ble High Court on 01.04.2022.

8. Thereafter, the petitioner by letter dated 02.05.2022 requested the Enforcement Directorate to fix dates for the appearance of the petitioner and requested for issuance of summons. Accordingly, Enforcement Directorate issued a summons and the petitioner appeared before the Enforcement Directorate on 30.05.2022 and 31.05.2022 and on these occasions his statement was recorded u/s.50 of the PML Act. Again on 22.06.2022 petitioner appeared and his statement was recorded. He also produced the documents called for. Thereafter, he preferred the above application. It is submitted that the petitioner would continue to participate and co-operate in the investigation.

9. In the counter statement, it is averred that the investigation is still going on, and the tracing of the entire proceeds of the crime and the concealed properties used for laundering have not been completed, moreover, in the anvil of the process of the investigation in the above crime, the petitioner has evaded appearance before the investigating officer in response to the summons issued to him except on a few occasions. According to the learned prosecutor, there are reasonable grounds to believe that the petitioner is taking efforts to abscond from the process of law. It is pointed out that the recent developments and incidents in connection with certain prominent economic offenders who absconded to alien countries give us clear lessons in this regard.

10. The points that arise for consideration are:-

1. Whether the petitioner is entitled to get permission from the court for the renewal of his expired passport and to go abroad for a period of five years.

2. Relief and cost.

11. Heard both sides.

12. **The Points:-** Sec.6 of the Passports Act, 1967 deals with the refusal of passports and travel documents. What is relevant for our consideration is Sub-clause 2(f). It reads as follows:-

“(2) Subject to the other provisions of this Act, the passport authority shall refused to issue a passport or travel document for visiting any foreign country under clause (c) of subsection (2) of section 5 on any one or more of the following grounds, and on no other ground namely:-

.....

(f) That proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India.”

13. Sec.22 of the Passports Act enables the Central Government to exempt any persons or class of persons from the operation of any of the provisions of the Passport Act. Invoking the said power the Government of India issued notification GSR No.570(E) dated 25.08.1993, exempting citizens of India against whom proceedings in respect of offences alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of provisions of clause (f) subsection(2) of Sec.6 of the Act.

14. Given this enabling provision, the petitioner moved the above application. The petitioner would say that he is a businessman engaged in the

business of the distribution of lotteries. He is an established businessman with business interest inter alia overseas and as such, from time to time the petitioner is required to travel abroad. This fact is not in dispute. In 2018, this court as well as the CJM Court granted permission to the petitioner to renew his passport and to go abroad. When the passport again got expired, CJM court was pleased to grant permission to renew the petitioner's expired passport for a period of two years. This court refused to grant permission for the reason that he failed to co-operate with the Enforcement Directorate during the course of further investigation. He was asked first to co-operate with the investigation and then to seek permission from the court for renewing his passport. Later, he appeared before the Enforcement Directorate and gave statements. He had given the relevant dates in his petition. It is not seen denied in the counter statement. There is also no mention of pending summons issued against the petitioner herein.

15. At the time of the hearing learned prosecutor submitted that the petitioner after the appearance before the Enforcement Directorate, obtained an adjournment but failed to appear on any of the subsequent dates. The investigation is continuing and the money involved is very high. Therefore, the petitioner has to be again summoned for recording his statement. According to the learned prosecutor if the passport of the petitioner is renewed and if he is given permission to go abroad there is every chance that the petitioner will abscond and will never come back.

16. Anyway, there is no pending summons issued by the Enforcement Directorate. If the Enforcement Directorate issue summons in future during the course of further investigation, definitely the petitioner has to appear, give

statements, produce documents and fully co-operate with the investigation. This can be ensured by imposing conditions. For that reason alone the petition need not be dismissed. The petitioner can be called upon to execute a bond with solvent sureties to ensure observance of the conditions imposed by the court. It is needless to say that willful violation of any of those conditions will be a valid ground for the cancellation of the permission granted to the petitioner to go abroad.

17. The petitioner seeks permission to go abroad for a period of five years. In the predicate case, the learned CJM was pleased to grant permission only for a period of two years. It is better to have a consensus regarding the period of exemption. Therefore, the period of exemption can be fixed as two years. Needless to say that the period of two years will start to run only from the date of renewal/fresh issuance of the passport. To that extent, I am inclined to allow this application. The above points are answered accordingly.

In the result, the petition allowed as follows:-

1. The passport of the petitioner shall be renewed for a period of two years.
2. The petitioner is permitted to depart from India during the above period.
3. The petitioner shall fully co-operate with the Enforcement Directorate and shall appear before the Enforcement Directorate in response to the summons issued to him as part of the further investigation going on in the above case. Three consecutive non appearance will be treated as a deliberate instance of non co-operation with the ongoing further investigation by the petitioner.

4. The petitioner shall file an affidavit stating that he will appear before this Court as and when directed.
5. Whenever the petitioner intends to leave the country, he should file before this court an affidavit with travel details, further to enclose with copies of the travel documents including visa.
6. The Petitioner shall also file an affidavit before this Court within three days of his return from the foreign country.
7. The petitioner shall execute a bond for Rs.1 crore together with two solvent sureties for the like sum.
8. Breach of any one of the conditions mentioned above shall be a ground for the cancellation of the permission granted by this court to depart from India and for the forfeiture of the bond.

Dictated to the Confidential Asst., typewritten by her directly to the computer system, corrected and pronounced by me in open court on this the 26th day of November 2022.

Sd/-
Anil K Bhaskar
Judge, Spl. Court for PMLA Cases

Appendix:Nil

Id/-
Judge, Spl. Court for PMLA Cases
(By Order)

//True Copy//

Sd/-
Sheristadar.