

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS
JUDGE, (SPE/CBI)-III, ERNAKULAM**

Present :-

SRI.SHIBU THOMAS, SPECIAL JUDGE.

Thursday the 01st day of February, 2024/ 12th Magha, 1945.

Crl. M.P. No. 58/2024

in

S.C.1/2023

Petitioner /Accused No.7: Santhosh Eapen, aged 51 years,
S/o. C.C.Eapen, Cheruvathoor House,
Thalakkodu.P.O, Chottanikkara,
Ernakulam-686693.

Represented By : Advs. M.A. Muhammed Siraj, Harikrishnan
Sreekumar, Cyriac Tom, Naveen. A. Varkey
and Rizlana Nazar.

Respondent/Complainant: Director of Enforcement, Government
of India, represented by its Assistant
Director, Cochin Zonal Office, Kanoos
Castle, A.K. Sheshadri Road (Mullassery
Canal Road West), Cochin – 682001.

Represented By : Adv.Govindu P. Renuka Devi.,
Special Public Prosecutor.

This petition coming on for hearing on 29th day of January, 2024 in the presence of Counsel on both sides and having stood over for consideration till day the Court passed the following:

ORDER

Petition to return passport and permission to go to USA. Petitioner is the accused No. 7 in the above case.

2. The offences alleged to have been committed by the accused are u/s. 3 punishable u/s. 4 of PMLA Act.

3. Petitioner is the Chairman of Unitac Energy Solutions India Pvt Ltd, a Telecom Service Provider and is engaged in installation, operation and maintenance of telecome sites. It is submitted that telecome industry is an innovative industry with frequent up-gradation. It is further submitted that there is a need of huge amount to execute, contractual works for which petitioner mainly depends on bank for loan. Before the arrest of the petitioner, the company approached Canara bank for enhancement of existing business limit and approached Catholic Syrian bank for working capital for new 5 GB roll out project. While the discussions were going on, the petitioner was arrested and the same was published and telecasted in various medias and channels. Both banks informed the company that they cannot grant loan to the company since its then Managing Director is an accused in a money laundering case. Though the petitioner approached several other banks for loan, but the applications were

rejected for the same reason. The company is facing its financial constraints, life of 900 employees are also at stake. Hence it became highly necessary to seek financial assistance from his friends who are settled in US. According to the petitioner, contacting the friends and relatives settled in US through video conference or phone for raising funds may not be effective and practical. In the predicate offence registered by the Vigilance and Anti Corruption Bureau, final report is not filed so far. In another case pending before the Additional Chief Judicial Magistrate (Economic Offence), Ernakulam as CC No.704/2002 in which petitioner was accused No.7 is posted to 03.02.2024 for appearance of accused. Since evidence u/s. 244 is not yet commenced, it will normally take another two or three years for framing charge u/s.245 Cr.P.C. Since the trial and conviction of PMLA case depends upon the judgment in scheduled offence, the trial of the case pending before this Court will abide the result of the trial in predicate offence. The petitioner, also submitted that the right to travel is a fundamental right of the citizen. Therefore, this petition is filed to return the passport of the petitioner and permit him to go to USA for a period of twenty days in the interest of justice.

4. Respondent filed detailed objection contending that the petitioner is directly involved in the process or activity connected with the proceeds of crime including its possession, acquisition and use. The petitioner handed over 3.8 crores to A4 and A1 as upfront commission to award the construction contract to his firms. The said accused No. 4 had illegally exported US dollars 1,90,000 with the assistance of A2 and Sarith P.S and he absconded from India. An open ended non-bailable warrant also pending against him. Further, steps are being taken to execute the same. Further investigation in this case is going on with respect to the remaining embezzled amount. If permission is granted, it will adversely affect the further investigation in the present case. Petitioner has not produced any document to prove that loans are rejected by the banks and also did not give details of the person who is going to meet in US. The decision of the Hon'ble High Court produced by the petitioner has no application in this case because a further investigation with respect to the remaining embezzled amount is pending and accused No.4 is still absconding in this case. Moreover, the bail granted to the accused No.7/petitioner is under challenge and pending before the Hon'ble High Court of Kerala. Further more, petitioner is a flight risk, he

might go absconding and may not return to India which will have an adverse implication on the investigation and trial. Therefore, the respondent prayed to dismiss the petition.

5. Heard both sides.

6. The point for determination is, whether there is sufficient ground to allow the petition?

7. **The point:-** The petitioner, who is the 7th accused in this case, obtained bail on the condition that he would surrender his passport and not leave the country without permission of this Court. Now the petitioner filed this petition to get his passport back and to seek permission to travel USA for twenty days. He claims that he needs to get financial assistance from his friends who live in US. According to the petitioner, he is the Chairman of Unitac Engery Solutions India Pvt.Ltd, a telecome service provider operating with more than 900 employees. The company requires a large amount of money to carry out its contractual works. However, the banks have rejected the petitioner's application for loans for the reason that the Managing Director of the company is involved in a money laundering case. The petitioner was the Managing Director of the company when he was arrested. Therefore, he submits that it is very

important for him to get financial help from his friends in US. He also pointed out the stages of the predicate offence in this case and argued that it will take more than two years to frame charge in predicate offence, and hence the trial of the case will also be delayed.

8. The learned Special Prosecutor strongly opposed the contentions and argued that petitioner failed to produce any evidence to prove that his loan applications were rejected by banks. She said that the petitioner should have produced the documents that showed the rejection, but the petitioner did not do so even after getting several opportunities. The learned counsel further argued that investigation about Rs.3.8 crores that the petitioner gave to A4 as bribe is still going on. A4 fled from India and is absconding. An open ended non-bailable warrant is issued against him and further actions are being taken to execute the warrant. She further argued that the petitioner is likely to flee if he is permitted to go abroad, and that will hamper the ongoing investigation and trial of the case.

9. Petitioner claims that his loan applications were rejected by Canara Bank and Catholic Cyrian Bank. However, It is important to note that he has not produced any document to prove that his loan applications

were rejected. Moreover, the purpose stated in the petition is to seek financial assistance from his friends who are settled in USA, but the petitioner did not provide the details of the persons whom he is going to be met in US.

10. The right of accused to travel abroad is not absolute and can be curtailed by a judicial order as an incident to regulate the conditions governing the grant of bail. The right to travel abroad is a part of the fundamental right to personal liberty under Article 21 of Constitution of India, but it is subjected to reasonable restrictions in the interest of justice, public order and national security. The Hon'ble Supreme Court of India has held in several cases that the Court can impose conditions at the time of granting bail including the surrender of passport to ensure the presence of accused before the Court.

11. No doubt, petitioner has every right to travel abroad, but in the facts and circumstances of this case, I am of the opinion that he should produce sufficient documents to show the necessity to travel abroad. In this case, the petitioner has not shown any compelling reason or produced any document to justify his prayer. He has not established his claim that he has necessity to travel abroad to seek financial assistance from his

friends who are settled in US. Moreover, the petitioner is charged with serious offence of money laundering.

12. In the absence of any documents, I am of the view that in this case, petitioner failed to establish his case. Therefore, petition is liable to be dismissed.

In the result, petition dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 1st day of February, 2024.

Sd/-
Shibu Thomas
Special Judge, (SPE/CBI) – III
Ernakulam

Appendix: Nil.

Id/-
Special Judge, (SPE/CBI) – III

Typed by:-
Compd by:-