

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No. 3603 of 2019

Abhijit Kanti Dam @ Abhijit Kanti Dan, aged about 52 years, S/o Mrinal Kanti Dam, R/o Qr. No.2120, Sector IV/C, P.O. & P.S. Bokaro Steel City, District-Bokaro
... Petitioner

-Versus-

Union of India through C.B.I.

... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Pratiush Lala, Advocate
For the CBI	: Mr. Deepak Kumar Bharati, Advocate

10/30.10.2025 Heard Mr. Pratiush Lala, learned counsel appearing for the petitioner and Mr. Deepak Kumar Bharati, learned counsel appearing for the CBI.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for setting-aside the order dated 18.02.2019 passed by the learned S.D.J.M.-cum-Special Magistrate, C.B.I., Dhanbad in connection with RC 6(S)/2010 registered under Section 120B read with Sections 420, 467, 468, 471 of the Indian Penal Code, whereby, the learned Court has been pleased to dismiss the petition dated 28.07.2018 filed by the petitioner for release of his passport and the case is pending in the Court of the learned S.D.J.M.-cum-Special Magistrate, C.B.I., Dhanbad. The prayer is also made to modify the order dated 21.10.2014 passed in A.B.A. No.1520 of 2014 by the Coordinate Bench of this Court.

3. Learned counsel appearing for the petitioner submits that the petitioner is a doctor by profession and he frequently visits outside the India for his medical profession and also for acquiring the minutes of detail in field of medicines for betterment of people at large. He further submits that the petitioner has been made accused in the present case and he has earlier

moved before this Court for quashing of the order taking cognizance in Cr.M.P. No.1635 of 2010, which has been dismissed vide order dated 14.02.2014. He submits that the accused person including the petitioner have already returned back a sum of Rs.2.25 Crores to the Allahabad Bank and further the Bank has issued 'No Due Certificate' and the account also got closed in the Bank and the Bank is not interested to proceed further in the matter. He then submits that the petitioner has filed A.B.A. No.1520 of 2014, which has been allowed by the Coordinate Bench of this Court vide order dated 21.10.2014 with condition that the petitioner will submit his passport in the Court concerned along with other conditions also under Section 438 of Cr.P.C. He submits that pursuant to that, the petitioner has deposited his passport and he has been provided privilege of anticipatory bail after fulfilling other conditions imposed by the Court. He next submits that the petitioner has co-operated in the trial from the initial stage and now the case is more than 10 years old and there is no chance of early conclusion of the case and, therefore, right of the petitioner to move outside for his professional advancement as well as personnel requirements could not be denied. He also submits that there is allegation of wrongful gain in the present case to the tune of Rs.1 Crore 80 Lakhs and the amount of Rs.2.25 Crores has already been returned to the Allahabad Bank by the petitioner and the Bank has also issued 'No Due Certificate' and in this background, the petitioner has filed a petition before the learned Court for release of the passport, however, the learned Court has been pleased to reject the same on the ground that one of the co-accused namely Dilip Kumar Gope is the charge-sheeted witness and he was not appearing before the learned Court and on

the ground that the huge amount is involved in the case. He further submits that the said order is not in accordance with law and the right to travel for his medical profession is the fundamental right of the petitioner and that cannot be taken away. To buttress this argument, he relied upon the judgment passed in the case of **Suresh Nanda v. C.B.I.**, reported in **2008 Supreme (SC) 119**. He refers paragraph 18 of the said judgment, which reads as under:

"18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing."

4. On the same line, learned counsel appearing for the petitioner further relied on the judgment passed in the case of **Chennupati Kranthi Kumar v. The State of Andhra Pradesh and others**, reported in **2023 Supreme (SC) 655**. He refers paragraphs 8 and 11 of the said judgment, which read as under:

"8. A relevant decision of this Court on the issue involved is in the case of Suresh Nanda(supra). In the said decision, it was held that the power under Section 104 of Cr.P.C. cannot be invoked to impound a passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding passports shall prevail over Section 104 of Cr.P.C. Moreover, it was held that under Section 102 (1) of Cr.P.C., the Police have the power to seize the passport but there is no power to impound the same. It was held that even if the power of seizure of a passport is exercised under Section 102, the Police cannot withhold the said document

and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport Authority to decide whether the passport needs to be impounded.

11. *The direction to return the passports of his wife and son as a condition for the release of the appellants passport was completely illegal. As regards the passport of the son, it is taken care of as the appellant has followed the prescribed procedure in USA regarding lost passports. The condition of returning the passport of the 4th respondent could not have been imposed at all as the act of the Passport Officer of retaining the appellants passport was completely illegal. Therefore, the said respondent can make an application in a prescribed form to the competent regional officer for the reissue of the passport. If the validity of the passport has expired and the period provided for renewal thereof has expired, she can apply for a fresh passport. If the 4th respondent wants some documents from the appellant only for the purposes of filing an application for the reissue of the passport or for grant of a fresh passport, the appellant shall cooperate by doing the needful."*

5. Learned counsel appearing for the petitioner also relied upon the judgment passed in the case of ***Parvez Noordin Lokhandwalla v. State of Maharashtra and another***, reported in ***2020 Supreme (SC) 748***. He refers paragraph 24 of the said judgment, which reads as under:

"24. *Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel to the US for a period of eight weeks. We accordingly permit the appellant to do so, subject to his furnishing an undertaking to this Court before the date of travel that he will*

return to India after the expiry of a period of eight weeks and that he shall be available on all dates of hearing before the court of criminal jurisdiction, unless specifically exempted from personal appearance. The undertaking shall be filed in this court before the appellant undertakes travel. On the return of the appellant after eight weeks and if it becomes necessary for him to travel to the US, the appellant shall apply to the concerned court for permission to travel and any such application shall be considered on its own merits by the competent court. The appellant shall travel only upon the grant of permission and subject to the terms imposed. The passport of the appellant shall be handed over to the appellant to facilitate his travel, subject to the condition that he shall deposit it with the investigating officer immediately on his return."

6. Relying on the above judgments, learned counsel appearing for the petitioner submits that the petitioner is an Indian citizen and he is having Indian passport and the petitioner is required to travel abroad for his professional knowledge as being a doctor and in that view of the matter, the passport is needed. He submits that the petitioner is a practicing doctor in the city of Bokaro in the State of Jharkhand and he is not a flight risk. He submits that if the direction is issued to release the passport of the petitioner for every travel abroad, he will inform the learned Court and schedule will also be provided to the learned Court. On these grounds, he submits that the impugned order may kindly be set-aside and the direction may kindly be issued to release the passport of the petitioner.

7. On the other hand, learned counsel appearing for the CBI vehemently opposed the prayer for release of the passport of the petitioner and submits that the petitioner has not come forward with any schedule or proposed visit to any country and in view of that, passport in the blanket cannot be released. He further submits that the learned Court has rightly passed the order. He then submits that so far as deposition of Rs.2.25 Crores by the petitioner and

issuance of 'No Due Certificate' from the Allahabad Bank is concerned, he has got no instruction. He relied upon the judgment passed in the case of ***Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India and others***, reported in ***(1994) 6 SCC 731***. He refers to paragraph 15 of the said judgment more particularly directive issued in clause (i) therein, which reads as under:

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(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;"

8. Learned counsel appearing for the CBI further relied on the judgment passed in the case of ***Parvez Noordin Lokhandwalla (supra)*** on which the learned counsel for the petitioner has also relied and submits that in the said judgment, the parameters of releasing the passport has been considered in that case and the entire schedule has been provided by the petitioner of that case and in view of that, the Hon'ble Supreme Court has been pleased to release the passport with the condition that the petitioner of that case will deposit the passport with the Investigating Officer immediately on his return. On these grounds, he submits that there is no illegality in the impugned order and, as such, this petition may kindly be dismissed.

9. In view of the above submissions of the learned counsel for the parties, the Court has gone through the impugned order as well as the materials

available on record. It is an admitted position that the petitioner has been charge-sheeted with regard to mis-appropriation of Rs.1 Crore 80 Lakhs. In course of the argument, learned counsel appearing for the CBI pointed out that he has got no instruction whether the petitioner has deposited the sum of Rs.2.25 Crores to the Allahabad Bank or not and the said Bank has issued 'No Due Certificate' in favour of the petitioner or not, however, it has been recorded in the order dated 21.10.2014 passed in A.B.A. No.1520 of 2014 that the learned counsel for CBI has fairly submitted that the loan amount has already been paid to the bank and in the said A.B.A., the petitioner has been granted privilege of anticipatory bail. Thus, the submission made by the learned counsel for the petitioner with regard to return of the amount is an admitted position. The petitioner happened to be a practicing doctor and he is practicing in the city of Bokaro in the State of Jharkhand.

10. In the case of ***Satish Chandra Verma v. Union of India & others***, reported in ***2019 SCC OnLine SC 2048***, it has been held by the Hon'ble Supreme Court in paragraph 5 that the right to travel abroad is an important basic human right. Paragraph 5 of the said judgment reads as under:

"5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See : Mrs. Maneka Gandhi v. Union of India (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 (1958) which are as follows:

"Freedom to go abroad has much social value and represents the basic human right of great significance."

11. In the case of ***Maneka Gandhi v. Union of India***, reported in **(1978) 1 SCC 248**, the Hon'ble Supreme has considered the right to travel abroad and later on it was reiterated in the case of ***Satish Chandra Verma (supra)***.

12. Admittedly, at present the petitioner has not been convicted. The petitioner is facing trial. The petitioner has already returned the defalcated amount to the concerned Bank and now he wants to travel abroad for his medical profession purpose. Further, it is a duty of the authority concerned to find out suitability of the Visa to be granted for how many days in favour of the petitioner and that is not the concern of the Court.

13. The parameters of releasing the passport have been considered in the aforesaid judgments, as relied by the learned counsel for the petitioner as well as CBI. In the case of ***Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)***, the bail applications of undertrial prisoners arising out of NDPS Act were considered in which several foreign nationals were made accused and in that background, the said judgment has been passed. There is no doubt that the petitioner is charged for defalcation of the amount, however, he has already returned the same and the parameters of that judgment, so far as the petitioner is concerned, is not coming in the way.

14. In the case of ***Parvez Noordin Lokhandwalla (supra)***, direction was given to issue passport with condition that the same will be deposited with the Investigating Officer immediately on the return of the petitioner of that case. In that case issue of Green Card was also involved. The Hon'ble Supreme considering the schedule in releasing the passport with condition that the petitioner of that case will deposit

the passport on return before the Investigating Officer. Prima facie, the petitioner of that case was a flight risk and in that background, the said judgment was passed. The fact of the case in hand is otherwise. Admittedly, the petitioner is a practicing doctor and he has already returned the entire amount. Prima facie, the petitioner is not a flight risk. Moreover, the said passport was deposited in the year 2014. There is no allegation that the petitioner has not co-operated in the trial and he has tried to influence any witness. The petitioner, being a doctor, is required to attend the conferences abroad. Further, the petitioner has been directed to deposit his passport in A.B.A. No.1520 of 2014, vide order dated 21.10.2014 and in that background, the passport has been deposited.

15. For the aforesaid facts, reasons and analysis and considering that the petitioner is a doctor and to travel abroad is the fundamental right of the petitioner and that has been held in the case of ***Satish Chandra Verma*** and ***Maneka Gandhi (supra)*** and in that view of the matter, the order dated 18.02.2019 passed by the learned S.D.J.M.-cum-Special Magistrate, C.B.I., Dhanbad in connection with RC 6(S)/2010 is, hereby, set-aside.

16. The learned Court shall release the passport in favour of the petitioner and at the time of obtaining passport he will file an undertaking before the learned Court to the effect that at the time of leaving the country for each time for how many days he will travel abroad and when he will return back to India, he will inform the Court. The passport will be released to the petitioner with condition that he will apply before the concerned Court for permission for each travel. The passport of the petitioner shall be handed

over to the petitioner with the aforesaid conditions.

17. It is made clear that if the conditions made herein above will not be fulfilled by the petitioner, the learned Court will at liberty to take appropriate steps.

18. Accordingly, this petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated: 30th October, 2025

*Ajay/ **A.F.R.***