

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 01.06.2021

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Pronounced on : 11.06.2021

+ CRL.REV. P. 137/2021

CHEN HSUI YUN

..... Petitioner

Through: Mr. Priyanshu Upadhayay and Mr.
Amit Kumar Attri, Advocates.

Versus

DIRECTORATE OF REVENUE INTELLIGENCE ... Respondents

Through: Mr. Satish Aggarwal, Sr.SPP with
Mr. Gagan Vaswani, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By virtue of this petition, filed under Section 397 read with Section 482 Cr.P.C, the petitioner is seeking setting aside of the order dated 10.2.2021 passed by Ld. Principal District and Sessions Judge, New Delhi in Criminal Revision Petition 09/2021.

2. It is alleged that on the basis of some specific information, five passengers namely Chen Po Shuo, Wang Wei Ting, Liao Kuan Hua, Ms. Chen Hsui Yun and Ms. Chan Kai Li, holder of Republic of China (Taiwan) would be departing from IGI Airport, T-3, New Delhi by Air India Flight No. AI 310 to Hong Kong with its Scheduled departure at 2305 hrs on

27.08.2019. It is alleged that as per the said information, the said passengers would be carrying huge quantity of foreign currency on their persons or in hand baggage or in their checked-in-baggage, and would attempt to smuggle out the same. It is alleged that the respondent officers reached at T-3 IGI Airport and intercepted the above mentioned 5 passengers at Boarding Gate No. 15. It is alleged that their checked-in-baggage was searched and a total of USD 4,49,600 equivalent to Indian Rs.3,25,51,040 was recovered. The said amount was seized under the Panchnama dated 27/28.8.2019 and seized under seizure memo dated 28.8.2019. It is alleged that the petitioner was found in possession of foreign currency equivalent to Rs.65,00,000/- in her check-in-baggage. It is averred that petitioner was enlarged on bail vide order dated 25.10.2019 by learned CMM, Patiala House Courts, New Delhi imposing the condition that petitioner would not travel abroad without the permission of the court. It is averred that petitioner filed an application seeking release of her passport, which was dismissed by learned CMM vide order dated 10.12.2019. Thereafter, another application was filed by the petitioner seeking release of passport, which was allowed vide order dated 8.6.2020 by learned CMM Patiala House Courts. The said order was challenged by the respondent-Department before the learned District and Sessions Judge, PHC, New Delhi, and vide order dated 10.7.2020 the order of learned MM was set aside by the Session Judge. It is averred that due to some miscommunication between the petitioner and her previous counsel, the petitioner was not aware about the order dated 10.7.2020, by virtue of which, the order dated 8.6.2020 was set aside. Therefore, due to

inadvertence the new counsel engaged by the petitioner moved another application on behalf of petitioner seeking release of passport on the basis of the order 8.6.2020. It is averred that the application for release was allowed vide order dated 21.8.2020 on furnishing an FDR in the sum of Rs.50,000/-. The said order was assailed by the department before the Sessions Court and when notice was issued to the respondent, the counsel inspected the court file and found the above order dated 10.7.2020. So, on realizing the inadvertent mistake the same was informed to the Court, therefore, the Session Court set aside the order dated 21.8.2020.

3. It is further averred that the petitioner, thereafter, filed an application seeking permission to go abroad to her native country for a period of six months as the petitioner is a foreign national, and is facing immense financial hardship. She has no accommodation in India. It is averred that vide order dated 18.12.2020, learned CMM, PHC, in view of the facts and circumstances of the case, allowed the petitioner to visit abroad for a period of six months on certain conditions. The said order of learned CMM was challenged by the Department-respondent before the District and Sessions Judge, Delhi, and vide order dated 10.2.2021, Sessions Court had set aside the order granting permission to the petitioner to abroad.

4. The respondent-Department has filed reply. In reply, it is averred that there is no infirmity or illegality in the impugned order. It is further submitted that petitioner is a foreigner so she has no interest in India and in case the petitioner is allowed to go abroad she would not return India to face trial. It is submitted in the reply that show cause notice dated 29.12.2020

has been issued proposing confiscation of the case property i.e foreign currency (USD 449600) valued at Rs.3,25,51,040/-. It is further submitted in the reply that imposition of penalty on all the five accused persons including the petitioner herein has also been proposed and the said show cause notice is pending adjudication. It is further submitted in the reply that Sanction and Authorization for launching of prosecution has been granted vide order of the competent authority dated 28.5.2021. It is further submitted that in any event, if the order of learned CMM is upheld and the petitioner is allowed to travel abroad, the petitioner may be directed to deposit in cash or FDR for an amount at least 50% of the foreign currency in INR recovered from the petitioner. It is further submitted that an amount of Rs.90000 USD was recovered from the checked-in baggage of the petitioner. It is further submitted that petitioner has committed an offence punishable under Section 135 of the Customs Act 1962. It is denied that right to travel is inbuilt fundamental right under Article 21 of the Constitution of India. It is further submitted in the reply that petitioner is a foreign national and is a part of conspiracy and if she is allowed to go abroad, there are no chances of her returning and facing trial.

5. I have heard counsel for the petitioner and Mr. Satish Aggarwala, Sr. SPP for the Department.

6. It is submitted by learned counsel for the petitioner that petitioner is a mere carrier and tried to smuggle foreign currency inadvertently. He further submitted that petitioner has remained in India for about one year and six months and petitioner, being a lady, aged about 54 years, is facing extreme

hardship in living in Delhi. It is further submitted that petitioner is a lady aged about 54 years and her husband, who is aged about 64 years, is suffering from various old aged ailments and requires regular check up and care. It is further submitted by learned counsel for the petitioner that there is no one to take care of the family of the petitioner. He submitted that the sister of the petitioner has met with an accident and is in serious condition in the hospital. It is submitted that learned CMM, on the basis of considering the medical report and photographs which were filed by the petitioner along with the application, granted permission to the petitioner to go abroad. It is further submitted by learned counsel for the petitioner that petitioner may be allowed to visit her home for some period and subject to conditions. It is further submitted that petitioner would not misuse the liberty to go to her country, if granted by this Court, and would appear in Court to face the trial. It is further submitted by the counsel for the petitioner that respondent is not averse to the petitioner going abroad but subject to deposit 50% of the amount of recovered foreign currency from the petitioner, which is onerous. It is further submitted that there are no allegations that the petitioner is a habitual offender.

7. Learned Sr. SPP appearing for the respondent has argued on the lines of the reply filed by the Department. In the reply, it is submitted by the respondent that in the event petitioner is allowed to travel abroad, then the petitioner may be directed to deposit at least 50% of the foreign currency in the form of cash or in the form of an FDR with this Court.

8. In the instant case, petitioner is a lady and is living in India for more than one and a half year.

9. I have perused the order passed by learned Metropolitan Magistrate dated 08.06.2020, order dated 18.12.2020 passed by learned Chief Metropolitan Magistrate and the impugned order dated 10.02.2021 passed by learned Principal District and Sessions Judge. It has been vehemently argued by learned counsel for the petitioner that sister of the petitioner has met with an accident and learned Metropolitan Magistrate granted permission to go aboard on the basis of those documents. There is no serious challenge to the medical grounds made by the petitioner in the application which was filed before the Chief Metropolitan Magistrate, on the basis of which petitioner was allowed to travel abroad. In the reply filed by the respondent, it appears that respondent is not averse to the foreign travel of the petitioner if the petitioner is directed to deposit 50% of the amount recovered from her in the form of Indian currency. In the instant case, according to the respondent, amount of USD 90000 was recovered from the petitioner which was around Rs.65,00,000/- in Indian currency. The petitioner in the instant case is a lady, aged about 54 years, and there is nothing on record to show that she has previously involved in these types of activities. The condition to deposit 50% of the recovered amount to my opinion would be quite onerous.

10. Therefore, in my opinion, justice would be met if the petitioner, in the facts and circumstances discussed herein above, is allowed to travel abroad to her country, i.e. Taiwan, for a period of six months i.e. from

12.06.2021 to 11.12.2021 on deposit of amount of Rs.15,00,000/- lakhs in the form of an FDR in the name of Registrar General of this Court, and also subject to the following conditions:

1. Petitioner, at the time of depositing FDR, shall also furnish an undertaking to report back in the Court on 08.12.2021, failing which the amount of FDR shall stand forfeited without giving any further notice;
 2. Petitioner shall furnish her address during her stay abroad;
 3. Petitioner shall not seek extension of her stay abroad on any ground including medical grounds;
 4. Petitioner shall authorize her counsel to receive notice on her behalf during her stay abroad;
 5. During the stay of the petitioner abroad, no adjournment shall be sought by her counsel for lack of instructions from her account;
 6. Petitioner shall surrender back her passport on her return from abroad;
 7. Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any custom authorities or tamper with the evidence;
 8. Petitioner shall not indulge or commit such like offence(s) again – similar to the offence to which she is accused now.
11. The revision petition stands disposed of in the aforesaid terms.

RAJNISH BHATNAGAR, J

JUNE 11 , 2021

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