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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 236/2021**

DEPUTY DIRECTOR OF INCOME TAX (INVESTIGATION)
UNIT 4(3) Appellant

Through: Ms. Vibhooti Malhotra, Sr. Standing
Counsel with Mr. Shaliendra Singh, Jr.
Standing Counsel & Mr. Udit
Sharma, Adv.

versus

BHAVYA BISHNOI & ORS. Respondents

Through: Ms. Biji Rajesh & Ms. Heena Kochar,
Advts. for Mr. Gaurang Kanth, CGSC
for R-2/UOI.
Mr. N.P. Sahni, Mr. Naveen Kumar &
Mr. Anand Chaudhary, Advts. for
applicant.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.05.2022

CM APPL. 21499/2022

1. This application has been filed by Mr. Kuldeep Bishnoi, father of the respondent no. 1, seeking the release of his passports deposited with the learned Registrar General of this Court in compliance with the Order dated 09.08.2021 passed by this Court.
2. The respondent no. 1 had preferred the writ petition, being WP(C) 142 of 2020, *Bhavya Bishnoi v. Union of India & Ors.*, challenging the Lookout Circular issued against him. On an application filed by the respondent no. 1 seeking suspension of the Lookout Circular, the learned Single Judge, by the Impugned Order dated 04.08.2021, permitted the

respondent no. 1 to travel to the United States of America (in short, ‘the USA’) for a period of two years to attend to the Master in Public Administration Course at Harvard Kennedy School, John F. Kennedy School of Government, Cambridge, Massachusetts, USA, subject to the following conditions:

- “(i) The petitioner will keep the respondents informed about his travel itinerary from time to time;*
- (ii) He will not tamper with the evidence or contact any person who is a part of the investigation;*
- (iii) The petitioner’s father will file an undertaking before the Registrar General of this Court that he will not leave the country as long as the petitioner is abroad;*
- (iv) The petitioner, besides the security already furnished by him in respect of AG-059 (Old No.FLG 04), Phase-I, Ansal Plaza, Greater Noida, UP and the security of Rs.5 Lakhs - which is already lying with the Registrar General of this Court in terms of order dated 22.02.2021, will furnish a security to the satisfaction of the Registrar General of this Court for a further sum of Rs.1 Crore in the form of an FDR or a deposit.*
- (v) The petitioner will appear before any office of the Indian Embassy in the US, once in every eight weeks.”*

3. The appellant aggrieved of the above Order, preferred the present appeal.

4. This Court, vide its Order dated 09.08.2021, recorded the statement of the learned counsel appearing for the respondent no. 1, voluntarily undertaking that the father of the respondent no. 1, Mr. Kuldeep Bishnoi, shall deposit his passports with the learned Registrar General of this Court. It was clarified that when the father of the respondent no. 1 would require the said passports for certain “genuine and valid reasons”, he may apply to

this Court for necessary permission in that regard.

5. The father of the respondent no. 1 has now filed the present application seeking the release of his passports, claiming that he needs to travel to the USA for necessary treatment of thyroid cancer at the Clayman Thyroid Centre in Tampa, Florida, USA, and also to attend the commencement ceremony of graduation of his only daughter in the USA. It is contended that he had undergone an operation for thyroid cancer at the Clayman Thyroid Centre, USA, on 08.02.2017. He is once again having the same symptoms of serious disease that he had developed in the year 2017 leading up to the surgery and requires immediate and urgent treatment, for which purpose the applicant has been given an urgent appointment for 23.05.2022 by the Clayman Thyroid Centre, USA. It is further pleaded that the applicant's only daughter is going to receive her certificate/degree of graduation on 20.05.2022 at the The New School's 86th Annual Commencement Ceremony 2022, to be held in the Arthur Ashe Stadium, Flushing, Queens, New York City, USA, which the applicant needs to attend. The applicant further submits that his daughter also has a surgical procedure scheduled shortly thereafter, on 14.06.2022, at the Pearlman Aesthetic Surgery, New York, USA, for which he again has to be present in the USA.

6. The applicant submits that in the criminal proceedings initiated against him, the applicant has already been granted regular bail vide Order dated 29.04.2022, wherein no fetters have been placed on his overseas travel. The applicant has, therefore, prayed that his passports be released to enable him to undertake his travel to the USA between 15.05.2022 to 30.06.2022.

7. Upon issuance of the notice, the appellant has filed its reply to the above application, opposing the prayer made by the applicant. In the reply, it has been contended that apart from the respondent no. 1, the applicant himself is facing trial for offences punishable under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Though he has been granted bail vide Order dated 29.04.2022 in those proceedings, the Court while granting bail was persuaded by the fact that the applicant's passports already stood deposited before this Court.

8. The learned counsel for the appellant further submits that apart from contending that the applicant has taken an appointment at Clayman Thyroid Centre, USA, no medical document, showing any complication or urgency for such appointment, has been placed by the applicant along with the present application. As far as the surgery of the applicant's daughter is concerned, the same is for Rhinoplasty, which again cannot be said to be a "genuine cause" for the release of the passport. She submits that, in fact, a Lookout Circular has been issued against the applicant in his own name and, therefore, in any case, he cannot be allowed to leave the country. She submits that the respondent no. 1 is still in the USA and, therefore, the present application deserves to be dismissed.

9. In the rejoinder, the learned counsel for the applicant submits that he is not aware of any Lookout Circular having been issued against the applicant. He submits that as far as the respondent no. 1 is concerned, the learned Single Judge of this Court, in a CRL. M.C 1078 of 2022, ***Bhavya Bishnoi v. Income Tax Office, Through Shreyans Gupta, DDIT (INV)***, observed that the learned ACMM may consider granting exemption from personal appearance to the respondent no. 1 through an authorised

representative in the criminal trial. He further submits that the applicant is willing to give further security for the presence of respondent no. 1 in case this Court so directs.

10. We have considered the submissions made by the learned counsels for the respective parties.

11. The deposit of the passports by the applicant, though voluntarily, was certainly something which persuaded this Court not to interfere with the order dated 04.08.2021 passed by the learned Single Judge of this Court in the present appeal. This Court had granted liberty to the applicant to move an application seeking the release of the passports in case he so requires “for certain genuine and valid reasons”. As far as the submission of the learned counsel for the applicant that the applicant requires to present himself for an appointment at Clayman Thyroid Centre, USA, on 23.05.2022, we find that the said appointment appears to be in response to the request sent by the applicant. The applicant has not produced any document to show that the said appointment was immediately required for his health reasons. A voluntary appointment taken cannot, in our opinion, constitute a “genuine and valid reason”.

12. As far as the plea of the applicant that he is required to be present for the surgery of his daughter, we find that the same is a cosmetic surgery. The respondent no.1 is already in the USA and, therefore, in the peculiar facts of the case, it cannot be said that the presence of the applicant in the USA is indispensable. The same goes for the plea of the applicant being required to attend the graduation ceremony of his daughter.

13. As far as the reliance of the applicant on the Order dated 29.04.2022 granting him the bail in the criminal case, we may quote the relevant extract

therefrom, as under:

“ Considering the totality of facts and circumstances especially the undertaking given by the applicant before the Joint Registrar (Judicial), High Court of Delhi as well as undertaking given before the Ld. Registrar (General), High Court of Delhi, the applicant is admitted to bail on his furnishing of personal bond in sum of Rs.5,00,000/- with one surety in like amount. In case the applicant wants to go abroad, then he is directed to furnish information to this court at least 15 days prior to date of his travel clearly specifying the place which he intends to visit, the period for which he shall remain out of India and his date of return. An affidavit to this effect shall be filed by the applicant on the next date of hearing.”

(Emphasis supplied)

14. Clearly, the learned ACMM was persuaded to grant bail to the applicant, having considered the fact that his passports already stand deposited with this Court. The applicant, therefore, cannot use this Order to now get his passports released from this Court.

15. We are informed that even the respondent no. 1 has applied to the learned Single Judge of this Court for release of his passport.

16. In any case, the applicant, at the present stage, cannot travel outside the country as the appellant has submitted that a Lookout Circular has been issued against him. The applicant would, therefore, have to first seek an appropriate order against the said Lookout Circular, in accordance with the law, before leaving the country. The present application, therefore, is premature.

17. We also note that the present appeal itself is listed for hearing on 26.09.2022. Even the Writ Petition filed by the respondent no. 1 is pending adjudication. The respondent no. 1 has, till date, not appeared before the learned Trial Court in the criminal proceedings and remains to be outside the

country.

18. In view of the above, we find no merit in the present application. The same is accordingly dismissed.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

MAY 12, 2022/Arya/P