

**IN THE COURT OF SH. DHEERAJ MOR : Ld. ASJ-06 : NEW
DELHI DISTRICT : PATIALA HOUSE COURTS : NEW DELHI**

**Bail Application No. 2263/2022
in CC 58/2023**

Directorate of Enforcement Vs. Rajni Kohli & Ors.

14.10.2024

This is an application moved by the complainant department/ED for cancellation of anticipatory bail of non-applicant Vaibhav Dipak Shah, who was admitted to anticipatory bail vide order dated 15.11.2022.

Present: Sh. Manish Jain and Sh. Simon Benjamin, Ld. SPPs for the applicant/ED along with Sh. Naveen Jindal, Assistant Director, ED have joined the court proceedings through VC.
Sh. Tushar Anand, Ld. Counsel for the non-applicant has joined the court proceedings through VC.

1. Arguments on the present application have been heard. The case file, its reply and written arguments/synopsis furnished by both the parties are carefully perused.

2. The brief background of this application is that the non-applicant was admitted to anticipatory bail vide order dated 15.11.2022 subject to the following *inter alia* conditions:-

“(i) He shall deposit the sum of Rs. 7.10 Crores within 07 days of passing of this order, as undertaken by his counsel.

“(ii) He will return to India on 28.11.2022 or in no case beyond end of November 2022 and join investigation and cooperate in the same.”

3. In compliance of said conditions, the non-applicant deposited Rs.7.10 Crores on 23.11.2022. However, he failed to return to India on 28.11.2022. He moved an application dated

29.11.2022 for seeking extension of time to return to India on the medical grounds. During pendency of the said application of the non-applicant, the complainant filed the present application dated 21.12.2022 for seeking cancellation of his anticipatory bail on the ground of violation of the said condition of failure to return to India, improper application of Section 45 of Prevention of Money Laundering Act, 2002 (*hereinafter referred to in short as 'PMLA'*) and attempt of non-applicant to influence the witnesses or process.

4. On 04.01.2023, the non-applicant withdrew his said application dated 29.11.2022 for being infructuous. Vide order dated 25.04.2023, all the grounds for seeking cancellation of anticipatory bail of the non-applicant except for the ground of failure to return to India were rejected with the detailed reasoning. However, in respect of non-compliance of the said condition (failure to return to India), two following questions were framed:-

“1. firstly, whether the non appearance of accused in terms of the order dated 15.11.2022 can be considered to be deliberate?”

2. secondly, whether an anticipatory bail can be cancelled on the ground of non compliance, irrespective of the fact that the breach of the condition contained therein is deliberate or was beyond the control of the party, who is in breach thereof?”

5. While discussing the aspects related to the said questions, vide order dated 25.04.2023, the Ld. ASJ-04, NDD, PHC, New Delhi concluded that failure on the part of the non-applicant to return to India was due to health reasons and his subsequent attempts to return to India failed due to travel ban imposed upon him which cannot be considered to be deliberate breach of

condition imposed by the court. The relevant paragraph of the said order is reproduced as under:-

*“46. I am in doubt that the initial failure on part of the accused for health reasons and even the subsequent failed attempt on part of the accused to travel to India due to travel ban imposed on him by a court cannot be considered to be deliberate breach of the condition imposed by the court. That takes me to the legal maxim i.e. **Lex non cogit ad impossibilia**, which means, laws do not compel a man to do something he cannot possibly perform. This has also led to a problem.”*

6. Thus, it concluded the first of the said two questions in favour of the non-applicant and held that the non-appearance of the non-applicant in terms of the order dated 15.11.2022 cannot be considered to be deliberate.

7. However, in respect of the said second question, Reference was made to the Hon’ble Delhi High Court with a request to determine the question of law raised in Para No.51 of the said order and this application was kept pending till a response is received to the Reference from Hon’ble Delhi High Court. The said paragraph is as follows:-

“51. Therefore, a legal nodus has arisen in the present case and none of the parties before me has been able to cite a decision directly dealing with the aforesaid legal proposition i.e. whether an unintentional breach of a condition on account of legal impossibility to fulfill the same can be considered as a ground to cancel a bail once granted? Further, whether in case of a travel ban leading to legal impossibility to comply with the condition, the accused has a right to seek extension of time to comply with the condition?”

8. The Hon’ble Delhi High Court vide its order dated 23.05.2023, answered the said Reference in the following terms:-

“Having perused the detailed order dated 25.04.2023,

rendered by the learned Additional Sessions Judge-04, Patiala House Courts, New Delhi, and in particularly, paragraph 51 thereof, which has been reproduced herein above, we are of the considered view that the same does not raise any question of law, for the consideration of this Court. It is further observed that the question raised, if any, is regarding the facts and circumstances, antecedent and attendant, to the case. The reference is therefore, answered in the above terms.”

9. Thus, the Hon’ble Delhi High Court concluded that the Reference does not raise any question of law for consideration of the said Court. It further observed that the question raised, if any, is regarding the facts and circumstances, antecedents and attendant, to the case.

10. Subsequently, on 18.05.2024, the complainant/ED moved an application for seeking revival of this application. The said application was allowed on 20.08.2024 with the directions that the present application dated 21.12.2022 which has been directed to be kept pending vide order dated 25.04.2023 be restored at its original number.

11. In the above backdrop, Ld. SPPs for the ED/applicant/complainant have contended that the non-applicant did not make any effort to return to India pursuant to the conditions laid down in his anticipatory bail order dated 15.11.2022 whereby he was required to return till end of November, 2022. Initially, he avoided returning to India on the false pretext of his medical grounds and later, he collusively procured travel ban to circumvent the said condition. After November, 2022, several summons/notices were issued to him for joining investigation and providing requisite documents and information/financial transactions made by him with CFO of Sagar Diamonds Ltd.

However, neither he joined investigation nor provided any document/details. They have further argued that via e-mail dated 15.06.2023, he informed that the travel ban imposed upon him has been withdrawn and he shall be traveling to Delhi on 17.07.2023. Thereafter, via e-mail dated 16.06.2023, the non-applicant was asked to appear on 19.06.2023 at 10:30 am along with requisite details/documents. However, through e-mail dated 28.06.2023, he informed that another travel ban has been imposed upon him by the Hon'ble Commercial Court of UAE in the case of claimant Ms. Heba Akram Abdelmir Al-Douri.

12. Ld. SPPs for ED have further argued that after order dated 25.04.2023, a new relevant fact came to light when statement of Sh. Vipin Gupta, resident of Dubai, was recorded under Section 50 PMLA on 30.05.2023. It has been argued that in his statement, Sh. Vipin Gupta stated that he filed a civil suit in Dubai on 12.12.2022 against the non-applicant in collusion with him for helping him in getting a travel ban thereby enabling him an excuse for not returning to India. It has been contended that in view of the said material revelation, the *prima facie* view taken in the order dated 25.04.2023 that his failure to return to India was unintentional is required to be revisited. It has been further contended that even after withdrawal of the said collusive suit, he did not return to India and got another collusive civil suit filed against him through one Iraqi National Ms. Heba Akram to ensure that his travel ban is again invoked. There was gap of 05 days between withdrawal of previous civil suit against him on 09.06.2023 and institution of fresh collusive suit against him on 14.06.2023. However, he did not make any effort during the said

period for coming to India. The said statement under Section 50 PMLA of Sh. Vipin Gupta dated 30.05.2023, withdrawal of his suit on 09.06.2023 and institution of fresh suit by Ms. Heba Akram on 14.06.2023 clearly indicates that the non-applicant has been deliberately creating obstacles for avoiding return to India. It has been conceded that as on date, there is no evidence to suggest that the second civil suit is also a collusive suit. However, it has been contended that in the given facts and circumstances, it can be conclusively inferred that it is not a coincidence but a malicious attempt of the non-applicant to frustrate the rights of the investigating agency to comprehensively conclude its investigation qua him.

13. On the other hand, Ld. Senior Advocate for the non-applicant has argued that non-compliance of the said condition of return to India before the specified date was unintentional. He has contended that in compliance of order dated 15.11.2022, the non-applicant booked his air ticket for India on 28.11.2022. However, on account of shortness of breath and fluctuating blood pressure, he suffered medical emergency whereupon he was medically treated in Dubai on 27.11.2022 and advised bed rest. Accordingly, he moved an application dated 28.11.2022 for seeking extension of time to return to India and join investigation. However, vide order dated 29.11.2022, the said application was disposed off as withdrawn for being infructuous. After recovering from his medical condition, through an e-mail addressed to the IO, he expressed his intention to appear and join investigation on 18.01.2023. However, as he was scheduled to depart from Dubai for India on 18.01.2023 at 12:05 am, he was

prevented from exiting UAE on account of the complaint lodged by Sh. Vipin Gupta. He informed the same to ED explaining that he was in the process of finding out the details of the said complaint and the reasons for the said travel ban. After withdrawal of the said complaint/suit against him, via e-mail dated 15.06.2023, he informed the IO about the same and conveyed to him that he would be arriving in Delhi on 17.07.2023 at 04:45 am. However, IO directed him to appear before him at the earliest before the said date. Therefore, he got his air tickets booked from Dubai to Delhi for 26.06.2023. However, when he tried to board the flight for the said travel, he came to know that another travel ban has been invoked against him on the basis of the complaint instituted by one Ms. Heba Akram on 14.06.2023. Therefore, he was not permitted to travel to India.

14. In respect of statement of Sh. Vipin Gupta under Section 50 PMLA, Ld. Senior Advocate for the non-applicant has submitted that he being an adversary of the non-applicant gave the said motivated and false statement with an ulterior intention to pressurize him to budge into the case instituted by him at Dubai. Therefore, the said statement is not credible and nothing against the non-applicant can be inferred from it.

15. He has further contended that the said travel ban is still subsisting and therefore, it is not legally plausible for him to return to India. He has submitted that till his travel ban is revoked, he is ready to join investigation through video conferencing. He further assured that he would be come to India as and when the said travel ban is revoked. He has further

submitted that he has already tendered all the documents to the IO through e-mail which were sought by him. He has further submitted that he has responded to each and every notice of ED through e-mail and he is fully co-operating in the investigation of this case. He cannot be expected or compelled to do the things which are impossible. As it is impossible for him to travel to India due to travel ban, his failure to comply the said condition cannot be construed to be a deliberate defiance on his part.

16. At the cost of repetition, it is reiterated that vide order dated 25.04.2023, all the grounds raised in the present application for seeking cancellation of anticipatory bail of the non-applicant except for the ground of failure to return to India were considered and rejected with the detailed reasoning. Therefore, in this order, the only aspect that is required to be considered is whether the failure of non-applicant to comply one of the conditions of anticipatory bail order dated 15.11.2022 regarding return to India is deliberate or unintentional. Significantly, vide order dated 25.04.2023, it was *prima facie* held that the said breach does not appear to be deliberate.

17. After the said *prima facie* view dated 25.04.2023, a new relevant fact has emerged in the form of statement dated 30.05.2023 of Sh. Vipin Gupta under Section 50 PMLA wherein he has claimed that he had filed the said civil suit in Dubai against the non-applicant with his collusion for helping him in avoiding his travel outside Dubai. He was an adversary to the non-applicant and therefore, the possibility of his statement to be suffering from malaise of pressure tactics cannot be ruled out. Therefore, his said statement cannot be held to be gospel truth.

18. Even otherwise, the non-applicant already had a protective ring of anticipatory bail order in his favour. Therefore, had he traveled to India, he was not likely to suffer any detriment in the form of detention in this case. Thus, his travel to India would have been innocuous for him in relation to the present case. In these circumstances, no justifiable reason can be perceived to the reasonable senses as to why he would have attempted to get a travel ban invoked against him thereby jeopardizing the concession of anticipatory bail granted to him.

19. Be that as it may, there is no substantiated claim or reason to assume that the present claim instituted against non-applicant by Ms. Heba Akram at Dubai is a collusive suit. Therefore, as on date, there is a subsisting and lawful travel ban upon the non-applicant thereby restricting his travel from Dubai to India. The legal maxims “*Lex non cogit ad impossibilia*” and “*Impotentia Excusat legem*” are relevant and usefully mentioned in the context of the facts of the present case. The law can’t require someone to do something that’s impossible or unfeasible. If it is impossible to comply with a legal requirement, it should not be enforced or used as a basis for inflicting punishment or liability. The later maxim refers to the principle that a party cannot be held legally liable for failing to abide by law, if circumstances beyond their control rendered them unable to comply.

20. In the present facts and circumstances, there is no conclusive evidence to assume that the present claim against the non-applicant pending in the Court of Dubai has been collusively got instituted by him. There is no reason to disbelieve the veracity of legal documents of the said case produced on behalf

of the non-applicant. Accordingly, it can be safely concluded that as on date, it is not legally feasible for him to travel to India till the disposal of the said case or revocation of his travel ban. Therefore, the alleged breach of the said condition of anticipatory bail order dated 15.11.2022 cannot be held to be intentional and so, its non-fulfillment should not prejudice his Fundamental Right of Liberty.

21. Generally, bail is not canceled unless the court identifies compelling and robust reasons against the accused. The cancellation of his significant judicial decision that profoundly impacts an individual's freedom as enshrined in Article 21 of the Constitution of India. Therefore, court has to exercise abundant and considerable caution when retracting bail. Thus, the court must strike a delicate balance between safeguarding individual liberty and maintaining the integrity of the judicial process.

22. Furthermore, in these peculiar circumstances, no explanation has been forthcoming from the complainant as to why physical presence of the non-applicant is imperative for his interrogation and conclusion of investigation qua him. In the anticipatory bail order, this court has held that his custodial interrogation is not required. Therefore, it is not clear why the complainant is insisting upon his physical appearance for his interrogation. In this era of advancement of information technology, he can be easily interrogated by using scientific tools like videoconferencing. When the trial can be conducted through video conference, this court sees no reason that the investigation, in which custodial interrogation has been held to be not required, cannot be conducted by using the said scientific means. In the

instant case, when it is found that non-traveling of the non-applicant to India is on account of circumstances beyond his control, the IO ought to have used the scientific means for conclusion of investigation qua him.

23. In view of the above discussion, no ground is made out for canceling the anticipatory bail order dated 15.11.2022 of the non-applicant. Accordingly, the present application is hereby dismissed.

24. Copy of this order be given *dasti* to both the parties.

(Dheeraj Mor)
ASJ-06/NDD/PHC
New Delhi:14.10.2024