



2024 : DHC : 856



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 06.02.2024**

+ CRL.REV.P. 854/2022

AMAN JAIN

..... Petitioner

Through: Mr.Rajiv Raheja, Ms.Geetu
Raheja, Mr.Siddant Singhal,
Advs.

versus

CUSTOMS

..... Respondent

Through: Mr. Pramod Bahuguna, SPP

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 15.11.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Special Judge (NDPS), South-West District, Dwarka District Courts, Delhi (hereinafter referred to as the 'Trial Court') in Custom Case File No.VIII(10)/ACE/SIIB/FEDEX.NDPS/AI/45/2021 titled as **Customs vs. Aman Jain**, on an application filed by the petitioner herein, being Misc DJ ASJ 313-2022, requesting for release of his passport.

2. By the Impugned Order, the learned Special Judge has dismissed the said application on the following grounds:

"I have gone through the said document which is annexed with the application. As per this



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document, the duration of admission is from 09th January 2023 to 31st December 2024. Ld. counsel for the Customs has raised the apprehension that brother of the accused has made several communications with drug traffickers located outside India and the present applicant may hamper the investigation. The final report is yet to be filed. In view of the submissions made above and reports filed by the Customs, I am not inclined to allow the present application, at this stage.”

Submissions of the learned counsel for the Petitioner

3. The learned counsel for the petitioner submits that the petitioner was granted bail by an order dated 04.06.2021 passed by the learned Special Judge. One of the conditions imposed for grant of bail to the petitioner was that the petitioner shall surrender his passport before the Customs Department. The petitioner duly complied with the said condition and surrendered his passport. The petitioner has, thereafter, been granted admission at Thompson Rivers University, Vancouver, Canada, for pursuing the course in Post Baccalaureate Diploma in Marketing. The learned counsel for the petitioner submits that the petitioner has also deposited the tuition fee for the said course.

4. The learned counsel for the petitioner submits that though the course was to initially start on 09.01.2023, on the request of the petitioner due to non release of his passport, the same has now been deferred and the course is now said to start from January, 2024. He submits that he can still join the said course. He submits that the fact of the admission has been duly verified by the respondent.

5. He further submits that though the petitioner was arrested on 02.03.2021 in relation to the subject prosecution, the charge sheet has



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still not been filed. He submits that the charges, in any case, are directed mainly against his brother, namely Lakshay Jain. He submits that while investigation is ongoing, future of the petitioner cannot be jeopardized.

6. He further submits that the Impugned Order has been passed only on the conjecture that the petitioner may hamper investigation if allowed to travel.

7. As far as the allegation of the petitioner being involved in other cases, he submits that in the documents filed by the respondent on 17.08.2023, the respondent itself has placed on record a copy of the order dated 19.05.2023, wherein the petitioner has been granted bail in FIR No.187/2022, registered at Police Station: Crime Branch under Sections 22/25/29 of The Narcotic Drugs and Psychotropic Substances, Act, 1985, wherein the Court observed that apart from the disclosure statement of co-accused, there is no material filed to implicate the petitioner in the case. He submits that the inquiry before the Directorate of Revenue Intelligence (DRI), Mumbai is also on some vague allegation against the petitioner in which the petitioner has no role.

Submissions of the learned SPP

8. On the other hand, the learned SPP submits that the present petition is not maintainable inasmuch as the Impugned Order is interlocutory in nature.

9. He further submits that the investigation is pending and charge-sheet could not be filed only because one of the co-accused is



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presently absconding and proceedings to declare him as Proclaimed Offender are pending before the Court.

10. He submits that there are other criminal cases involving drugs trafficking also pending against the petitioner, as have been referred in the documents filed with index dated 17.08.2023.

11. He submits that, in any case, the Impugned Order was passed in relation to the admission obtained by the petitioner for the course starting in January, 2023. In case the petitioner has now obtained admission in the course starting in January, 2024, he should first move such application before the learned Special Judge.

Analysis and Conclusion

12. I have considered the submissions made by the learned counsels for the parties.

13. As held by the Supreme Court in ***Menka Gandhi v. Union of India***, (1978) 1 SCC 248, right to travel abroad is a part of the personal liberty guaranteed under Article 21 of the Constitution of India. It can be curtailed in accordance with a procedure established by law.

14. As far as the objection on the maintainability of the present petition is concerned, by the Impugned Order, the learned Trial Court has denied the permission to the petitioner for release of his passport. The Impugned Order, therefore, cannot be said to be interlocutory in nature as it has trappings of finality and decides the vital and valuable rights of the petitioner.

15. The observations made by the learned Special Judge while



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rejecting the application filed by the petitioner for seeking release of his passport has been reproduced hereinabove. The learned Special Judge seems to have simply accepted the submission of the learned counsel for the respondent, who was appearing therein, that as the brother of the petitioner has made various communications with drugs traffickers located outside India, the petitioner may hamper the investigation, however, as claimed by the learned counsel for the petitioner, no material in this regard was placed before the learned Special Judge. In any case, the allegation of making contact is against the brother of the petitioner and it is not explained how the petitioner going for his studies will make a difference in or hamper the investigation.

16. The petitioner had moved the above application stating that he had to travel abroad, that is, Canada for pursuing his studies. Presently the petitioner is only an accused of an offence for which even the charge sheet has not been filed, though more than three years have passed since the recovery.

17. Therefore, in my view, the Impugned Order cannot be sustained.

18. As regards the plea of the learned counsel for the respondent that as the petitioner is seeking permission to go abroad for his studies for a different session of the course, which the petitioner claims only to be a deferred admission, he should first move such an application before the learned Trial Court, I find merit. The respondent would have to verify the fact of admission, and place other related facts, like the nature of other cases alleged to be pending against the petitioner,



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before the learned Trial Court, as and when application is filed by the petitioner.

19. Accordingly, the present petition is disposed of setting aside the Impugned Order dated 15.11.2022 passed by the learned Special Judge. However, the petitioner is granted liberty to file a fresh application before the learned Special Judge to seek release of his passport, which shall be decided by the learned Special Judge remaining uninfluenced by any observation made in the Impugned Order.

20. As the petitioner has expressed urgency for his travel to Canada for pursuing his studies, the learned Special Judge is requested to expedite the hearing of the application and decide the same within a period of 15 days of such filing.

21. The petition is disposed of in the above terms.

22. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 6, 2024/Arya/ss

[Click here to check corrigendum, if any](#)