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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. M.C. No.3605/2009

Reserved on : 26.11.2009

Date of Decision : 5.2.2010

Bina K. Ramani

.....Petitioner

Through: Mr. C.A. Sundaram, Sr.
Advocate with Ms. Aparna
Bhat, Advocate

Versus

State

..... Respondent

Through: Mr. Pawan Bahl & Mr. Jaideep
Malik, APPs

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

V.K. SHALI, J.

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. r/w Section 439 Cr.P.C. seeking modification of the order dated 21st August, 2009 passed by the learned Additional Sessions Judge granting bail to the petitioner, subject to the condition that the petitioner shall surrender her passport permanently to the Investigating Agency and further allowing the petitioner to travel abroad after seeking permission of the Trial Court or the Investigating Agency.
2. Briefly stated, the facts leading to the filing of the present case are that the petitioner is claiming herself to be a lady of 65 years of age. An FIR No.493/2006 was registered against her on 4th August, 2006 under Section 120B/420/467/468/471 IPC as a sequel of FIR No.287/99 registered on 30th April, 1999 under Section 307/302/201/420B IPC at

P.S. Mehrauli which is commonly known as Jessica Lal murder case. The case of the prosecution is that the Jessica Lal was shot dead in a restaurant bar of the petitioner which was located at H-5/6, Mehrauli Road, West Delhi. The restaurant bar was being run in the name and style of "Once Upon a Time". It is alleged that the bar did not have any valid licence for serving the liquor but had only obtained a licence from the MCD for running an eating house. A licence was also obtained from the DCP(Licensing). Since the trial of the accused persons in Jessica Lal murder case, had resulted in acquittal of all the accused persons an FIR No.120/2006 registered at P.S. Mehrauli on 6th March, 2006 and it was assigned to Special Investigation Team (SIT to investigate as to whether there was complicity on the part of the investigating agency which resulted in acquittal. During the investigation carried out by the SIT, the factum of the present petitioner running the aforesaid eating house at the premises bearing No.H-5/6, Mehrauli Road, New Delhi, Qutub Colonnade under the aforesaid name, was found to be without any valid licence from the Excise Department and thus a case came to be registered against her also for the various aforesaid offences. The petitioner was arrested and she remained in police custody as well as judicial custody for a short while. She was enlarged on bail by the learned ACMM vide order dated 15th September, 2006 on furnishing a personal bond in the sum of Rs.2.00 lakh with one surety for the like amount on the condition that she shall surrender her passport and shall not leave the country without permission of this Court. She was also directed to report to the IO on 1st Saturday of every month till the filing of the final report or till further orders and join the investigation as and when required by the Investigating Officer.

3. The case of the petitioner is that despite the FIR having been registered, almost 3½ years back, the police has still not filed the final report on the ground that they are awaiting the results from FSL. It is alleged by the petitioner that during all these years, the petitioner had joined investigation as and when she was required. It is alleged that as a matter of fact, on 30th April, 2007 the Investigating Officer made a statement that the present petitioner is not required for the purpose of further investigation.
4. The petitioner has alleged that her brothers and younger daughter live abroad and during the period between the date of registration of the FIR in question and the filing of the present petition, the petitioner had to travel abroad on number of occasions after obtaining the permission from the Court. It is alleged by her that every time she is required to undertake the travel abroad, she has to undergo the torturous procedure of firstly applying to the Court for not only release of her passport but also seeking permission to travel abroad. It is also alleged by her that the petitioner is a respectable person and has roots in society and therefore she is not going to flee from the processes of law. It is also stated by her that she has already filed an undertaking before the Hon'ble Court that she would participate in the trial as and when the same commences. It is stated that she has not misused her liberty. As a matter of fact, it is alleged that she had testified as a witness in Jessica Lal murder case and but for her testimony it would not have resulted in conviction of the accused. Hence, it is prayed by her that since the aforesaid condition of bail requiring her to obtain release of the passport and the permission for undertaking the travel abroad is working as an onerous condition and

causing undue hardship and mental torture, therefore the said condition may be modified, waived or deleted from the bail order.

5. On notice being issued, the respondent filed its status report and reiterated contents of the FIR that the petitioner was running the resto bar under the aforesaid name and style without having valid Excise licence and this resulted in an offence under Section 61 of the Excise Act, 1940 apart from the allegations of forging the documents and using forged documents as genuine for which various provisions of IPC were invoked. It is alleged by them that the petitioner had submitted to the authorities certain self-attested bills which were forged which have been sent to FSL on 23rd April, 2008 and again some documents have been sent on 7th October, 2008 and the final outcome of the chemical/forensic examination is yet to be received and therefore the charge sheet could not be filed. With regard to the prayer for relaxation or the modification of the condition, the status report has curiously kept silent.
6. I have heard Sh. Sundaram, the learned senior counsel on behalf of the petitioner and Shri Bahl, the learned counsel on behalf of the respondent. I have also gone through the record.
7. There is no dispute about the fact that the petitioner is accused of having committed a non-bailable offence in which the grant of bail by the Court is a matter of discretion. While exercising the discretion in favour of the accused, the law also permits the Court both under Section 437(2) and 439 Cr.P.C. to impose such conditions as may be considered fit by the Court releasing the accused on bail. These conditions invariably have to be on the lines which will not only help the Investigating Agency to conduct the fair investigation but also ensure that the accused does not flee from the processes of law or the accused does not tamper with the

evidence. It is on account of this reason that invariably Courts have been in appropriate cases directing the accused person to surrender his passport or not to undertake the travel abroad without the permission of the Court. Similar condition has been imposed in the present case also especially for the reason that the present petitioner had her close relations outside the country and she was a frequent traveler and therefore in order to ensure that she does not flee from processes of law, the Court found it fit to impose such a condition. Thus, to begin with, there was absolutely no infirmity in the condition having been imposed by the learned Additional Sessions Judge originally when the bail order was passed. But at the same time while putting a restriction on the movement of an accused in the larger interest of the society, the Court has to also balance the fundamental rights of an individual even though he may be an accused. The Supreme Court in *Sunil Batra Vs. Delhi Admn.* AIR 1978 SC 1675 has categorically laid down that merely because a person is a convict or an under trial, he does not get denuded of all his fundamental rights. This legal position has been reiterated by the Supreme Court in subsequent judgments like *State of Maharashtra Vs. Prabhakar Pandurang Sauzgi* AIR 1966 SC 424 and *Satwant Singh Sawhney Vs. Asstt. Passport Officer* AIR 1967 SC 1836. It is in this background that the convict or under trial has been given the benefit to cast vote. This would be more so in a case where a person though may be an under trial, but has been released on bail with the condition or putting a restriction on her movement to travel abroad. If the petitioner on account of such a restriction on her movement to travel abroad was required to obtain permission and the release of her passport this condition per se cannot be said to unreasonable. Then the next question

which is to be considered is whether she has at any given point of time misused the said concession or the liberty which has been granted to her? The petitioner has made a definite averment in the petition that after the registration of the FIR against her, not only she has travelled abroad after obtaining permission from the Court but she has scrupulously given back and surrendered the passport and subjected herself to the processes of law. Thus she has not misused her concession.

8. It is really very strange that despite 3½ years having elapsed, the Investigating Agency is still not able to file a final report before the competent court. If on account of inapt attitude or the inapt handling of the Investigating Agency the final report is not filed within a reasonable time which this Court in any given case considers should not be more than a year or so, it does not mean that the accused who has been enlarged on bail with the condition of surrendering his passport or seeking permission from the Court to travel abroad can be made to suffer for such callous attitude of the Investigating Agency because in such a case it would tantamount to taking away the right to go abroad which is a part of personal liberty by a procedure which by no stretch of imagination can be said to be just, fair and reasonable. It has been held in *Maneka Gandhi Vs. UOI* AIR 1978 SC 597 that under Article 21 the procedure established by law must be just, fair and reasonable through which life or personal liberty is taken away. If this is permitted to be done, then it will be simply putting a premium on the inaptness or callous attitude of the Investigating Agency and also working to the detriment of the fundamental right of an under trial who may be enlarged on bail. The purpose of imposition of such a condition, as has already been stated hereinbefore, is to ensure that the accused must submit

herself to the processes of law. The said purpose can be secured by modifying the said condition of surrendering the passport and obtaining the permission from the Court by requiring the accused to either furnish some title deed of an immovable property to the Court to ensure that she does not flee from the processes of law or by imposing some additional conditions.

9. The petitioner in the instant case has categorically stated that she has interest in immovable property at Delhi as well as at Goa, therefore I feel that the interest of the Investigating Agency can be secured by ensuring that she makes herself available during the course of the trial by requiring her to file an undertaking that she will make herself available during the course of investigation or trial.
10. For the reasons mentioned above, I feel that the prayer of the petitioner for waiving the condition of surrendering her passport and obtaining the permission from the competent court in terms of the order dated 21st August, 2009 is working very onerous on the petitioner restricting her freedom of movement and her right to travel abroad under guaranteed Article 21 of the Constitution, especially in view of the fact that already 3½ years have elapsed and yet the Investigating Agency has not filed the final report. Accordingly, the said condition is dispensed with, however the petitioner is directed to furnish an undertaking in writing to the Registrar General of this Court that she will make herself available during the course of investigation or the trial as and when she is required apart from furnishing itinerary of her travel abroad to the IO, including the place where she is likely to stay and the countries she proposes to visit and the date of departure and the date of return. This condition will be deemed to have been incorporated as a condition of the bail till the

charge sheet is filed and after the charge sheet is filed, she would ensure that the trial of the case shall not be adjourned or deferred on the ground that she is undertaking to travel abroad.

11. Accordingly, with this modification of the bail order dated 21st August, 2009, the petition is allowed.

February 05, 2010
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V.K. SHALI, J.