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

Date of decision: 27th December, 2019

+ CRL.M.C. 6753/2019

DIRECTORATE OF REVENUE INTELLIGENCE ..Petitioner
Through Mr. Talha Abdul Rahman, Adv. with
Mr. Sumit Kumar, IO

versus

MOHAMMED NASHRUDDIN Respondent
Through Mr. Mukesh Anand, Mr. Abhishek
Malhotra, Ms. Yashasvika Sharma
and Mr. Himanshu Lohiya, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT(ORAL)
27.12.2019

CRL.M.A. No. 43696/2019 (exemption)

Allowed, subject to all just exceptions. Application stands disposed of.

CRL.M.C. No. 6753/2019

1. With the consent of parties, this petition has been taken up for final disposal.

2. This petitioner, Directorate of Revenue Intelligence (DRI), impugns order dated 11th November, 2019, passed by the learned Chief Metropolitan Magistrate (CMM), Patiala House Courts, New Delhi and order dated 26th November, 2019 passed by the learned Additional Sessions Judge, New

Delhi District Courts, dismissing the Revision Petition thereagainst, whereby the application of the respondent, for permission to travel abroad, has been allowed.

3. *Vide* order dated 11th November, 2019, the learned CMM, allowed an application, filed by the respondent herein, for permission to travel abroad.

4. The respondent, who is a holder of an Indian passport, is facing trial for commission of offences under Section 135 of the Customs Act, 1962. The respondent was enlarged on bail, *vide* order dated 3rd June, 2019, passed by the learned CMM, and the application, for cancellation of bail, moved by the DRI, was also rejected by the learned CMM, *vide* order dated 25th September, 2019. It appears that DRI has accepted the said order and has not carried the matter to any higher forum. One of the conditions, on which bail was granted to the respondent, was that he would not leave the country without seeking permission of the trial court.

5. In view of the said condition, the respondent moved an application, before the learned trial court, for permission to travel abroad. The ground, adduced by the respondent, was that he had two minor children, who were studying in the United Arab Emirates (UAE) and that, owing to his being detained in India, the studies of the children were being seriously affected. It was also sought to be contended that that the respondent's business interests were also being jeopardized, as a result of his continued stay in India.

6. *Vide* order dated 11th November, 2019, learned CMM permitted the respondent to travel abroad, subject to the following conditions:

“1. that he shall join the investigation as and when required by the IO.

2. that he shall furnish FDRs in sum of ₹3,00,000/- with an undertaking to report back in the Court on 20.11.2020 failing which the said amounts shall stand forfeited without giving any notice;

3. that he shall furnish his addresses during his stay at abroad;

4. that he shall not seek extension of his stay at abroad on any ground including medical ground;

5. that he shall authorize his counsel to receive notice on his behalf during his stay at abroad;

6. that he shall properly instruct his counsel for proceeding further in the case during stay in abroad and no adjournment shall be sought by counsel for lack of instruction from him;

7. that he shall produce his surety in the Court on any working day to give statement that surety has no objection in case accused is allowed to go to abroad;

8. that he shall surrender back his passport on his return from abroad.”

7. The DRI assailed the aforesaid order dated 11th November, 2019, by way of Criminal Revision Petition No. 774/2019, before the learned Additional Sessions Judge (ASJ). *Vide* order dated 26th November, 2019, the said Crl. Revision Petition No. 774/2019 stands dismissed by the learned ASJ. Reliance has been placed, by the learned ASJ, for arriving at his decision, on the well-known judgment of the Supreme Court. ***Maneka Gandhi v. U.O.I, (1978) 1 SCC 248***, which holds the right to travel abroad to be a fundamental right, which cannot be curtailed save and except in accordance with due process sanctioned by law. In the circumstances of the present case, learned ASJ has held that there was no justification to interfere

with the exercise of discretion, by the learned CMM, in allowing the respondent to travel abroad, subject to the conditions imposed in that regard.

8. Aggrieved thereby, the DRI has approached this Court by way of the present petition.

9. On the last date of hearing, i.e., 24th December, 2019, while issuing notice on this petition, this Court observed that details of address of the respondent, during his stay in Dubai, had already been provided by him in accordance with the directions, contained in the order dated 11th November, 2019 *supra* of the learned CMM, as affirmed by the learned ASJ *vide* order dated 26th November, 2019 and that the respondent had also provided the details of his authorised counsel in India, being Mr. Himanshu Lohiya, Office at A-1/11, Satyawati Colony, Ashok Vihar-III, Delhi. Learned counsel for the petitioner had sought time to take instructions in relation thereto.

10. Today learned counsel for the petitioner submits that the respondent had, indeed, provided the aforesaid details, regarding the address at which he would be residing, during his stay in Dubai, as well as the details of his counsel in India. He, however, draws my attention to Ground 'D' in the portion, which reads thus:

"D. Inadequate/Insufficient conditions permitting to travel abroad

i. The respondent claims to be the proprietor of multiple firm in Dubai trading in huge volumes of gold/gold jewellery annually. However, the CMM Court *vide* order dated 11.11.2019 has only imposed a condition of depositing a FDR of Rs. 3,00,000/- permitting him to travel abroad. It is noteworthy, that he is being

investigated for active involvement in the smuggling syndicate associated with smuggling of gold/gold jewllery into India to the tune of 2-3 Mt tones since 2016.

ii. Further, the CMM Court in Condition at SI. No. 3 of the Order dated 11.11.2019 does not mention to whom the respondent has to submit the address during his stay abroad. The respondent must be mandated to give the details of his address during the stay abroad also to the investigative agency along with a proof of genuineness of the address- e.g.: sale/purchase agreement, rent agreement, electricity bill etc. in the name of the accused.

iii. At SI. No. 5 of the conditions of the CMM order dated 11.11.2019, it has been mentioned that the counsel of the accused to be authorized to receive the notice during his stay abroad. It is requested that the respondent shall give the complete details of his authorized counsel also to the investigative agency i.e. DRI.

iv. Further, during his stay abroad the respondent be mandated to register his presence in the Indian embassy in Dubai every fifteen days.”

11. Having noticed the inhibitions expressed in ground ‘D’ of the writ petition, I am of the opinion that facts of the case do not warrant any interference with the directions, of the learned CMM, permitting the respondent to travel abroad, as upheld by the learned ASJ. The address of the respondent, during his stay abroad, has been furnished by the respondent and respondent is also being represented by his counsel, whose details have also been provided to the DRI.

12. Moreover, the learned CMM while dismissing the application for cancellation of bail *vide* order dated 25th September, 2019, notes that the Deputy Director of the DRI, categorically stated, before the Court that the respondent was not required anymore for the purpose of investigation, and that requisite examination of the respondent had already been conducted.

The learned ASJ in the impugned order dated 26th November, 2019, takes note of the same. Moreover, the learned ASJ notes that the counsel for the petitioner had made a statement that since the detailed Show Cause Notice dated 26th September, 2019 was issued and served on the respondent, he was not required for further investigations in the present matter.

13. There is, however, substance in the request, in the aforesaid extracted Ground 'D' that the respondent be directed to register his presence periodically, in the Indian Embassy at Dubai.

14. Resultantly, this petition is disposed of in the following terms:

(i) The respondent is permitted to travel abroad for a period of two months, which will commence from the date when he departs. For this purpose, DRI is directed to return the passport of the respondent, to him within a period of one week from today. The passport appears to have been retained by the DRI despite the order of the learned CMM and learned ASJ, even without obtaining any stay from this Court.

(ii) The respondent shall ensure that he will appear before the Indian Embassy at Dubai every 10 days. No default, by the respondent, in this regard, shall be condoned and any default, in this regard, will result in this order standing vacated and ceasing to apply.

(iii) The respondent shall return to India on or before the date of expiry of two months from the date of his departure, and shall inform

the DRI accordingly.

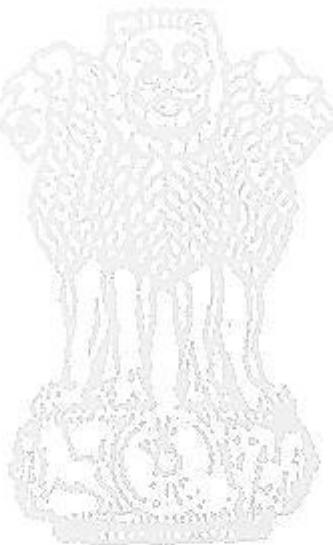
15. With the aforesaid directions, this petition stands disposed of.

Dasti.

**C. HARI SHANKAR, J.
(VACATION JUDGE)**

DECEMBER 27, 2019

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