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

% *Reserved on: 21.08.2023*

Pronounced on: 26.09.2023

+ **CRL.M.C. 5914/2023 & CRL. M.A. 22214/2023**

DISHA A. RAVI Petitioner

Through: Mr. Shri Singh, Mr. Abhinav
Sekhri, Advocates

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Amol Sinha, ASC (CrI),
with ACP Manoj Kumar, PS
IFSO, Special Cell, Mr.
Kshitiz Garg, Mr. Ashvini
Kumar & Ms. Chavi
Lazarus, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 482 read with Section 439 of the Code of Criminal Procedure, 1973 (*Cr.P.C.*), the petitioner seeks setting aside of order dated 09.08.2023 passed by learned Additional Sessions Judge, Patiala House Courts, New Delhi in Misc.App.No. 87/2023 seeking modification of bail conditions imposed *vide* order dated 23.02.2021 in case arising out of FIR bearing no. 49/2021, registered at Police Station Special Cell, New Delhi under Sections 124A/153/153A/120B of the Indian Penal Code, 1860 (*IPC*).

FACTUAL BACKGROUND

2. Brief facts, necessary for the adjudication of present petition, are that on 04.02.2021, the present FIR was registered on the allegations that there was a concerted campaign by banned terror organisations to disrupt the Republic Day national ceremony through several unlawful acts in the name of protests, and during social media monitoring on 04.02.2021, it had come to the notice of agencies that a link of a Google Document (*toolkit*) had been accidentally shared on Twitter, which contained a detailed plan of a larger conspiracy to wage an economic, social, cultural and regional war against the country. As per FIR, a perusal of the said documents/toolkit had also revealed that it was promoting campaign material circulated by a Canada-based organisation that had openly and deliberately shared posts on social media platforms that tend to create disharmony or feeling of enmity, hatred or



ill-will between different religious, racial, language or regional groups, or castes or communities. It was also observed that there was a specific call to protest outside Indian Embassies and target symbols linked to Indian culture and there were plans to instigate certain communities against one another. It was also alleged that due to this conspiracy, certain incidents of vandalism by anti-social elements had taken place outside Indian Embassy in Rome, Italy and violence had also taken place on 26.01.2021 on the streets of Delhi i.e. at Red Fort, near ITO, in Nangloi, etc. which had resulted in large-scale loss of public property and more than 500 police personnel had been injured in these incidents. It was further alleged that after this incident, various social media accounts had been used to spread rumours and fake news/videos to promote enmity between different groups and give provocation to commit riots. From the contents of such documents/toolkit, it was observed that there was a global conspiracy to bring dissatisfaction towards the elected government established by law and promote disharmony and feelings of enmity between different groups with intent to cause riots. Accordingly, the present FIR was registered and investigation was carried out by the police.

3. The present accused/petitioner was arrested from her residence on 13.02.2021 and was granted bail *vide* order dated 23.02.2021 by learned Additional Sessions Judge, Patiala House Courts, New Delhi.



ARGUMENTS ADDRESSED BY BOTH THE PARTIES

4. Learned counsel for the petitioner argues that the applicant is required to seek permission of the learned Trial Court each time she has to travel abroad, which causes inconvenience as the petitioner is required to travel abroad frequently. It is also stated that the petitioner on several occasions in past has been granted permission to travel abroad and she has not violated any conditions of the orders by virtue of which she has been granted such permission. It is further argued that further investigation in the present case is not pending against the petitioner or co-accused persons, but on some other aspects and the petitioner cannot create any hurdle in further investigation, if so required, even for the purpose of collecting evidence from other parties. It is stated that modification is sought only to the extent that instead of seeking permission, it should be mentioned that petitioner will intimate/inform the concerned Court before travelling abroad. It is therefore prayed that considering the mandate of Article 21 of the Constitution of India, the present petition be allowed.

5. Learned ASC for the State, however, opposes the present petition and states that merely because the condition imposed is found inconvenient, the same cannot be a ground for modification of the order. It is also stated that in the present case, investigation is being carried out by the police and some material evidences are yet to be collected and, therefore, there is no ground for modification of condition (c) of the bail order dated 23.02.2021, as prayed by the petitioner.



6. This Court has heard arguments addressed by both the learned counsel for petitioner as well as learned ASC for the State, and has perused the material on record.

ISSUE BEFORE THIS COURT

7. Whether the condition imposed in the bail order dated 23.02.2021 for seeking prior permission of the concerned Trial Court for the purpose of travelling abroad is in violation of Article 21 of the Constitution of India.

ANALYSIS AND FINDINGS

i. The Allegations against the Petitioner

8. In the present case, it is alleged that the petitioner was the Editor of the 'toolkit' and was involved in its preparation, which as per prosecution case contained a detailed plan of a larger conspiracy to wage war against the country and to create disharmony or feeling of enmity not only amongst different groups, including calling for protests outside Indian Embassies and violence on the Republic Day, but also alleged to have created a WhatsApp group using her mobile number, which included other persons who were involved in editing of the said 'toolkit', though she had later deleted the WhatsApp group. As per prosecution case the petitioner had remained in touch with co-accused Shantanu through WhatsApp, Telegram, Signal App, who as per their alleged action plan, was physically present in New Delhi from 20.01.2021



to 27.01.2021 alongwith other persons who were local collaborators of the conspiracy to incite disaffection and precipitate violence on 26.01.2021.

ii. Conditions Imposed while Granting Bail to the Petitioner

9. On 23.02.2021, the learned ASJ while granting bail to the present accused/petitioner was pleased to impose the following conditions:

“...As a cumulative effect of the aforesaid discussion I am of the considered opinion that the applicant accused deserves to be released on bail subject to filing of personal bond/surety bond in the sum of 1 lakh ₹ with two sureties each in the like amount and subject to the following conditions:

- 1) She shall continue to cooperate with the ongoing investigations and shall join the investigation as and when summoned by the IO;
- 2) She shall not leave the country without the permission of the court;
- 3) She shall scrupulously appear at each and every stage of the proceedings before concerned Court so as not to cause any obstruction or delay to its progress...”

iii. Law Regarding Imposing Of Conditions While Granting Bail

10. In this background, this Court notes that as per Section 439(1)(a) of Cr.P.C., the concerned High Court or Court of Sessions is empowered to impose any such conditions which it considers necessary, while granting bail in cases specified under Section 437(3) Cr.P.C.

11. Section 439(1)(a) of Cr.P.C. reads as under:



“...that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;...”

12. Section 437(3) of Cr.P.C. reads as under:

“...(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under subsection (1), the Court may impose any condition which the Court considers necessary- (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or (c) otherwise in the interests of justice...”

13. The contention of learned counsel for the petitioner, primarily, is that going abroad is a fundamental right of an individual provided by the Constitution of India under Article 21 and cannot be interfered with lightly by any Court of law, and that the petitioner is entitled to modification of the condition imposed in the bail order as it is not only causing inconvenience to her, but is also in violation of her fundamental right to personal liberty.

14. It is not in dispute that as held in several cases by the Hon’ble Apex Court, Article 21 of the Indian Constitution and the personal liberty guaranteed therein includes the freedom to travel abroad. However, one area where the exercise of the right to travel abroad often gets clouded is when an individual is accused in a



criminal case. In criminal cases, while granting bails, it is within the purview of the Courts concerned to impose conditions on the grant of bail to ensure that the accused co-operates with the investigating agencies and does not evade justice. One such condition which is occasionally imposed is the requirement for the accused to obtain prior permission of the Court before traveling abroad as provided under Section 437 (2) and 439(1)(a).

15. While the freedom to travel abroad is a cherished right, it is not absolute, and the criminal courts are duty-bound to prevent misuse of liberty of bail by individuals. The Courts are required to balance the accused's right to personal liberty and the right to travel abroad against the legitimate concerns of ensuring the accused's presence during trial, and protecting the interests of the victims and the State as well as the investigating agency for conducting and concluding investigation without any hindrance.

16. In this Court's opinion, the learned ASJ while granting bail in this case has taken note of the entire circumstances of the case, and in its wisdom, has imposed condition that in case the petitioner would wish to visit another country, prior permission of the Court will be taken. Thus, the condition to require judicial permission before travelling abroad has been imposed by Court of law while granting bail, according to the facts and circumstances of the case, as well as for securing the presence of the petitioner and also to ensure that the petitioner is not able to tamper with evidence or influence witnesses.

17. Merely because the condition imposed by the Court as per



law is causing inconvenience to the petitioner, it can neither become a ground for deletion of the condition nor it can be said that the same amounts to violation of her fundamental right to travel abroad.

18. As observed in preceding discussion, the fundamental right to freedom in cases where a person is facing trial in a criminal case is subject to reasonable restrictions and is not absolute. In this regard, this Court also deems it appropriate to refer to the observations of Hon'ble Apex Court in case of *Barun Chandra Thakur v. Ryan Augustine Pinto* 2019 SCC OnLine SC 1899, wherein while setting aside an order modifying such a condition, the Hon'ble Apex Court had held as under:

“9. On an overall conspectus of the circumstances, this court is of the opinion that since the charge-sheet had been filed, there was no material alteration in the facts, justifying the High Court to modify the conditions governing the grant of anticipatory bail. Significantly, an identical application for modification of the conditions of bail was made earlier by the respondent, which did not meet with success; he withdrew that application. There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. Mere inconvenience in the matter of approaching the court, therefore- absent of any significant change of circumstances (i.e. framing of charges or no significant or serious material emerging during the trial, in the course of deposition of key witnesses, as to the role of the respondent), ought not to have led to dilution of the terms of the High Court's previous consistent orders...”



CONCLUSION

19. This Court notes that the investigation in the present case is pending as the investigating agency is still collecting evidence from foreign intermediaries which are crucial pieces of evidence in the present case.

20. On the other hand, the petitioner in this case has been granted permission to go abroad by the learned Trial Court on three occasions in past and the permission was granted after obtaining reply of State in this regard. It is not the case of petitioner that permission was denied to her on any occasion by the learned Trial Court. Needless to say, the Court concerned applies its mind to the application moved by the petitioner and reply if any filed by the State or arguments addressed by learned APP while granting permission for going abroad, depending upon the itinerary, visit to the country and the purpose for which the petitioner may be seeking permission to go abroad.

21. **This Court does not undermine the fundamental right of petitioner to have freedom to travel abroad as per Article 21 of Indian Constitution, but at the same time, it also cannot undermine the right of the prosecuting agency to ensure that the investigation is carried out and completed without any hindrance. It is not against the principles of fair adjudication to ensure that neither the investigation nor the trial is stalled by absence of the accused/petitioner.**

22. The investigating agency has still not filed chargesheet and



may also require the presence or information from the accused/petitioner and therefore, merely intimating and going abroad to any country without permission, without submitting the itinerary and the duration or purpose of such visit will have adverse impact on the investigation and trial of the case as in that case, the Court concerned will have no check as to for how long and for what purpose the petitioner will be leaving the country and her whereabouts and itinerary will not be verified by the State before she leaves abroad which cannot be permitted at this stage when the chargesheet is yet to be filed.

i. The Fundamental Right under Article 21 of Indian Constitution vs. Reasonable Restrictions By The Court: Balancing The Competing Rights

23. The challenge to issue in question was also raised in the context that the restriction imposed at hand was unreasonable to the extent as to infringe the fundamental right of the petitioner under Article 21 of the Constitution of India. A well grounded legal analysis of reasonable restriction jurisprudence leads this Court to conclusion that the reasonable restrictions on the movements of a person are to be understood and adjudicated upon in context of the facts of a case, the nature of allegations, the stage of investigation or trial and thereafter compare it with proportionality of the condition imposed on a person. Any inconvenience felt by an individual accused cannot be the sole criteria to waive or delete a reasonable condition imposed by a Court of law in accordance with



the statutes.

24. This Court holds that in line with legal understanding of reasonable restrictions, based on the case-law and the law on the subject, while having due deference for individual fundamental rights of citizens, the Courts also have to take a view that the justification of reasonable limits on the rights of a person involved *prima-facie* in a criminal case cannot be sacrificed on the alter of inconvenience felt by an individual accused against whom investigation is pending.

25. The modern human rights jurisprudence has embraced and accepted this concept in a series of judgments of Hon'ble Supreme Court and the pressing substantial objective of fair investigation by the State against a person accused of inciting hatred amongst people of the country etc. pending investigation, will overweigh the inconvenience of the individual accused.

26. This Court therefore finds a rational connection between the condition imposed and the substantive goal of pending investigation balanced with minimal restriction on the fundamental right of the petitioner herein. The order portrays the fine balancing between the restriction on the right of an accused under Article 21 by imposing this restriction and balancing it by permitting her to go abroad after seeking permission of the Court. **It portrays that it is not a blanket ban or infringement of her fundamental right to travel abroad but a reasonable restriction by the Court meant to enforce through the legal system and order that neither the investigation nor the trial is affected by the absence or**



non-availability of the accused, while causing and interfering in most minimal manner with the convenience and fundamental right of the petitioner.

27. The condition imposed has not been found to be in conflict with the competing rights of the State and of the accused. The impugned order has balanced the importance of rights of the State and individual concerns, in light of the principle that the fundamental right under Article 21 is not absolute.

28. This Court notes that there is no infringement of mobility rights of the accused or any geographical boundaries restriction placed on the petitioner but a reasonable condition of seeking permission of the Court before travelling abroad which has not been denied to her in the past. Therefore, the prayer regarding deletion of bail condition imposed *vide* order dated 23.02.2021 stands rejected.

29. However, taking into account the anxiety of the petitioner, it is directed that in case an application seeking permission to go abroad is moved by the petitioner, at least one month prior to her intended visit, the State will file appropriate response to the same expeditiously giving sufficient time to the learned Trial Court to pass an appropriate order. The concerned Court will pass an order taking into account the plea of State and verification of the facts etc. as mentioned in the application.

30. Accordingly, in above terms, the present petition is disposed of along with pending application.

31. It is however clarified that nothing expressed hereinabove



shall be construed as opinion of this Court on the merits of the case.

32. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 26, 2023/ns