

Item- 02-06-2022
SL-1
(Vacation Bench)

WPA 9723 of 2022

Abhishek Banerjee & Anr.
Versus
The Union of India & Ors.

sg Ct. 6

Mr. Saptansu Basu, Sr. Adv.
Mr. Anirban Ray, Adv.
Mr. Sanjay Basu, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Soumen Mohanty, Adv.
Mr. Piyush Kr. Ray, Adv.
Ms. Utsha Dasgupta, Adv.

...for the petitioners

Mr. S.V. Raju, Addl. SG
Mr. Vipul Kundalia, Adv.

...for the E.D.

Mr. Niladri Saha, Adv.
Ms. Susmita Saha Dutta, Adv.

...for U.O.I.

Affidavit of service filed in Court today is kept with the record.

It is submitted by the learned Advocate for the Union of India that the Enforcement Directorate is not under the Ministry of Home Affairs but it is under the Department of Revenue, Ministry of Finance, Government of India.

The petitioners are permitted to amend the cause title suitably to incorporate the name of the respondent no.2 in the writ petition.

The learned Advocate-on-Record is granted leave to delete the name of the Ministry of Home Affairs as respondent no.2 and incorporate the name of the Department of Revenue, Ministry of Finance in its place.

In connection with ECIR No. 17/HIU/2020, the petitioners were served with number of summons during the period between

22nd July, 2021 and 10th September, 2021 directing them to supply various information and documents and also to attend the office of the respondent no.3 for interrogation at New Delhi. It is on record that the petitioners challenged the authority of the Enforcement Directorate for calling him to Delhi for interrogation by filing an application under Article 226 of the Constitution before the Delhi High Court. The said writ petition was, however, dismissed. Thereafter, the petitioners moved before the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) Nos. 2806-2807/2022 and obtained an interim order. The Hon'ble Supreme Court was pleased to pass the following directions:

“(a) It shall be open to the Directorate of Enforcement to require attendance of the petitioners in its office situated at Kolkata by giving at least 24 hours’ notice.

(b) Simultaneously, notices shall also be issued to the Commissioner of Police, Kolkata and the Chief Secretary – State of West Bengal so that adequate police protection is afforded to the persons seeking to examine or interrogate the petitioners.

(c) Subject to aforesaid directions (a) and (b), there shall be stay of the effect and operation of the judgement and order presently under challenge.”

Thus, the Enforcement Directorate is at liberty to interrogate the petitioners in Kolkata by giving at least 24 hours’ notice.

On 31st May, 2022, the petitioner no.1 wrote a letter to the Assistant Director, Directorate of Enforcement stating, *inter alia*, that he is suffering from eye ailment as well as

Neurofibroma for which he is undergoing medical treatment. It is also informed that for medical purpose he may be required to travel abroad and, accordingly, he prayed that his personal attendance may be excused for the time being.

It is submitted by Mr. Basu, Learned Senior Counsel on behalf of the petitioners that the petitioner no.1 is suffering from eye ailment since long following an accident. He is under medical treatment at Moorfields Eye Hospital, Dubai, United Arab Emirates. On 26th May, 2022, the petitioner no.1 received an information that his appointment for eye check up is fixed on 3rd June, 2022 at Moorfields Eye Hospital, Dubai. Therefore, he booked air tickets for himself and his wife, petitioner no.2 herein, to travel from Kolkata to Dubai on 1st June, 2022 and return ticket on 10th June, 2022. On 31st May, 2022, the petitioner no.1 informed his absence from the country by a letter to respondent no.3, Enforcement Directorate. The respondent no.3, in turn, informed him that Enforcement Directorate has apprehension that he and his wife are going to flee from this country to Dubai. Hence, in the interest of investigation, E.D. disallowed the petitioners' request to visit abroad. This has prompted the petitioners to file the instant writ petition.

It is submitted by Mr. Basu, Learned Senior Counsel that the petitioners' journey to Dubai is absolutely on medical ground and nobody should be denied medical treatment in a hospital of his choice. The Enforcement Directorate has manufactured a cock and bull story that the petitioners would flee away to some other unknown destination from Dubai. It is further submitted by the learned Senior Counsel on behalf of the petitioners that, after initiation of the case by the E.D., the

petitioners visited foreign countries for various purposes even after receipt of summons for interrogation. The petitioner no.1 is a sitting Member of Parliament. Therefore, there cannot be any apprehension of the petitioners being fled away to any unknown destination from Dubai. The petitioners undertake to visit Dubai for medical purpose and immediately after his medical treatment, he will return to Kolkata on 10th June, 2022. It is also submitted that petitioners' visit does not affect the directions passed by the Hon'ble Supreme Court. In order to observe and obey the conditions imposed by the Hon'ble Supreme Court, the petitioner no.1 informed about his journey to abroad to the Enforcement Directorate by a letter dated 31st May, 2022. It is also submitted by him that the hospital authority allowed the petitioner no.1 to accompany one escort with him. For this reason, his wife is proposing to go with the petitioner no.1.

The Learned Additional Solicitor General on behalf of Enforcement Directorate, at the outset, has raised two preliminary objections – first, the affidavit was not in form and accordingly, this writ petition cannot be entertained. Secondly, the petitioner no.1, by filing a previous writ petition in Delhi High Court, himself admitted that the Delhi High Court has the jurisdiction to entertain any writ petition arising out of the case instituted by the Enforcement Directorate. So, the jurisdiction of this Court has been questioned.

Beside the above-noted technical objections, it is strongly submitted by the Learned A.S.G. that the E.D. was initiated on 20th November, 2020. The Hon'ble Supreme Court made certain directions which have already been quoted above and

the first direction is that the petitioners were permitted to be examined by the Enforcement Directorate giving at least 24 hours' notice. If the petitioners are allowed to remain away from this country, the Enforcement Directorate will not be in a position to issue summons upon the petitioners within the stipulated period of time as mentioned by the Hon'ble Supreme Court. Therefore, the instant writ petition has been filed in disguise only to seek modification of the Hon'ble Supreme Court's order, which this Court cannot.

It is further submitted by the Learned A.S.G. that the case in which the petitioners were interrogated and are sought to be interrogated is a case of illegal coal block smuggling from unauthorized coalfields in the State of West Bengal. The prime accused in the said case is one, Binoy Mishra. The Enforcement Directorate instituted the case on 20th November, 2020 but Binoy Mishra managed to flee away on 19th November, 2020. Therefore, the E.D. could not apprehend the said Binoy Mishra. It is further submitted by the Learned A.S.G., under instruction, that the said Binoy Mishra is reportedly staying in Dubai and the petitioners are intending to go to Dubai to meet the principal accused of the case to destroy the evidence and materials involved in the case.

It is submitted by Learned A.S.G. that the story of medical treatment is absolutely fabricated and cannot be considered. According to him, Dubai is not a place renowned for medical treatment. There are number of renowned eye hospitals in this country and the petitioner no.1 may be medically treated in any of the hospitals of this country. It is also pointed out that the petitioners have not annexed the

appointment letter of the Doctor. Therefore, the petitioners have manufactured a false case only to leave this country for some ulterior motives and if they are able to be out of clutches of the Enforcement Directorate, the investigation of the case will be frustrated.

Having heard the Learned Counsel for the parties and on careful perusal of the entire materials on record, let me record at the outset that the petitioners are not made F.I.R. named accused in ECIR No. 17/HIU/2020. The petitioners were previously interrogated. After receiving summons, the petitioner no.1 attended Delhi office of the Enforcement Directorate. He was interrogated more than once. Subsequently, after the order of the Hon'ble Supreme Court being passed, no fresh summon was issued upon the petitioners for interrogation. Petitioner no.1 was, however, issued notice to produce certain documents and by a covering letter dated 29th March, 2022, the petitioners submitted all the documents sought for by the Enforcement Directorate. Therefore, it is not the case of the Enforcement Directorate that the petitioners are not cooperating with the investigation.

While passing the order dated 17th May, 2022, the Hon'ble Supreme Court did not pass any order restraining free movement of the petitioners. The only condition was that the petitioners must avail themselves off for interrogation within 24 hours of receiving the notice. Since the petitioners would be out of this country for medical treatment, the petitioner no.1 informed the matter to the Enforcement Directorate. The Enforcement Directorate apprehended that the petitioners may flee away. Prima facie, there is no ground of such apprehension of the

Enforcement Directorate. The Learned A.S.G. submits that the petitioners are intending to go to Dubai to meet the prime accused of the case, namely, Binoy Mishra. Surprisingly enough, the Enforcement Directorate in spite of its knowledge that Binoy Mishra is staying in Dubai and the petitioners will meet Binoy Mishra in Dubai, it has not taken any step to apprehend the said Binoy Mishra or even to unearth the alleged association of the petitioners with said Binoy Mishra. It is needless to mention that the right to life is the most important fundamental right enshrined in the Constitution. Right to life includes right to get proper medical treatment. A person cannot be forced or compelled for medical treatment of a particular country if he feels that his medical treatment will be made more effectively in some hospitals situated in some foreign country. If a patient has means, he is at liberty to go to a doctor or to a hospital of his own choice. State cannot restrict a patient from getting proper medical treatment of his choice.

On careful perusal of the order passed by the Hon'ble Supreme Court containing certain directions which are quoted above, this Court is of the view that if the petitioners are permitted to go abroad for medical treatment, the solemn directions of the Hon'ble Supreme Court cannot be said to be modified. The petitioners only want that they will not be present in this country till 10th June, 2022 for medical check up and during this period no notice may be issued to them to appear before the Enforcement Directorate. In such case, the Enforcement Directorate by issuing a purported notice may claim before the Hon'ble Supreme Court that the petitioners have violated the directions (a) of the Hon'ble Supreme Court.

Considering the instant application purely on humanitarian ground, this Court permits the petitioner no.1 and his wife to visit Moorfields Eye Hospital, Dubai, United Arab Emirates during the period between 2nd June, 2022 and 10th June, 2022.

The petitioners shall submit the copies of the air tickets and the address where they would stay in Dubai during the particular period to the Enforcement Directorate with the phone numbers of the Hospital and the place of accommodation of the petitioners so that the Enforcement Directorate can keep a track of the whereabouts of the petitioners.

The petitioners shall also file a joint undertaking before the concerned authority of the Enforcement Directorate in Kolkata mentioning the above information and the date of return as fixed by this Court.

The instant writ petition is, thus, disposed of.

Urgent photostat certified copy of this order, if applied for be supplied to the parties upon compliance of all requisite formalities.

(Bibek Chaudhuri, J.)