

IN THE COURT OF VIKAS DHULL, SPECIAL JUDGE
(PC ACT) (CBI)-23 (MPs/MLAs Cases), ROUSE AVENUE
DISTRICT COURTS, NEW DELHI

Ct. Case no. 17/22
DLCT11-000304-2022
ECIR/04/HIU/2018

Directorate of Enforcement Vs. D.K.Shivakumar and Ors.

(Applicant / Accused A-1 D.K.Shivakumar)

Date of filing the application : 22.11.2023
Date on which order reserved : 25.11.2023
Date on which order pronounced : 25.11.2023

ORDER

1. Vide this order, I shall dispose of an application filed by applicant/accused A-1 D.K.Shivakumar (**hereinafter referred to as “applicant”**) seeking permission to travel abroad to Dubai w.e.f. 29.11.2023 till 03.12.2023.
2. Notice of the said application was issued to complainant i.e. Directorate of Enforcement (**hereinafter referred to as “ED”**), who had filed a detailed reply.
3. I have heard Sh.Mayank Jain, Ld.counsel for applicant and Sh.Manish Jain, Ld.SPP for ED. I have also carefully perused the record.
4. It was submitted by Ld.counsel for applicant that in the present case, applicant is on bail as per order dated 23.10.2019 of the Hon’ble High Court of Delhi passed in Bail Application No. 2484/2019 and is a 8 time elected Member of Legislative Assembly (MLA) from the State of

Karnataka and is currently serving as a Deputy Chief Minister.

5. It was further submitted that applicant has been invited by His Excellency, Dr.Sultan Ahmed Al Jaber, COP28 President-Designate and Michael R.Bloomberg, United Nations Secretary-General's Special Envoy on Climate Ambition and Solution, to attend the upcoming COP28 Local Climate Action Summit in Dubai, which is an annual international climate Summit convened by the United Nations. Therefore, applicant is seeking permission to travel abroad i.e. Dubai from 29.11.2023 till 03.12.2023. Applicant has also annexed invitation received by way of email dated 09.11.2023 inviting applicant to the inaugural Climate Summit as Annexure A-2.
6. It was further submitted that applicant has never violated any of the bail conditions imposed by the Hon'ble high Court of Delhi vide order dated 23.10.2019.
7. It was further submitted that applicant has on several occasions travelled abroad and returned to India and is not a flight risk. It was further submitted that investigation is complete and prosecution complaint is already filed before this court. It was further submitted that applicant has no criminal antecedents. Thus, there is no likelihood that applicant will commit any offence or tamper with the evidence or influence any witnesses.
8. Lastly, it was submitted that applicant undertakes to abide by any terms and conditions as this court may deem fit to

impose. Accordingly, a prayer for grant of permission to applicant to travel abroad to Dubai w.e.f. 29.11.2023 to 03.12.2023 has been sought.

9. On the other hand, Ld.SPP for ED has opposed the application on the ground that applicant is involved in a criminal conspiracy to move tainted cash and hide the source of such tainted cash with active participation and help of other accused persons.
10. It was further submitted that documents i.e. Annexure A-2, Annexure A-6 and Annexure A-7 are print outs of emails regarding invitation/confirmation of hotel booking and acceptance of invitation by the applicant but they are not supported with any certificate under Section 65B of the Indian Evidence Act, 1872.
11. It was further submitted that since applicant is a serving Deputy Chief Minister of Karnataka, therefore, any travel to any foreign country is subject to permission from the Central Government. However, the applicant has not filed on record any such permission obtained from the Government of India, permitting him to travel abroad.
12. Lastly, it was submitted that applicant has made false assertion in the application that he is not having any criminal antecedents, whereas it is a fact that two other cases are pending against applicant, out of which one case is of Disproportionate Assets. Accordingly prayer was made to dismiss the application.
13. In rebuttal, ld. Counsel for applicant/accused has submitted

that he will file the certificate under Section 65B of the Indian Evidence Act, 1872 during the course of the day. It was further submitted that being the Deputy Chief Minister of Karnataka, applicant/accused has applied for permission before the Government of India and the same is still awaited and applicant undertakes to go abroad only after receipt of permission from the Government of India. Lastly, it was submitted that no false assertion has been made by the applicant with regard to the applicant not having any criminal antecedents. Accordingly, it was reiterated that application be allowed.

14. I have considered the rival submissions of respective counsels and have carefully perused the record.
15. It is a settled principle of law that right to travel abroad is part of personal liberty as per Article 21 of the Constitution of India. However, such right is not unfettered and reasonable restriction can be imposed upon the same. One of the restriction which can be imposed is to curb the said right during the course of investigation or trial if it appears that applicant/accused is likely to abscond and will not be available to face the trial.
16. Applicant was released on bail by the Hon'ble High Court of Delhi vide order dated 23.10.2019 passed in Bail Application No. 2484/2019 subject to one of the condition that he shall not leave the country without the permission of the court.

17. In the present case, charge sheet in the form of complaint stands filed against applicant. Applicant has filed on record copy of invitation dated 09.11.2023 sent by Michael R. Bloomberg, United Nations Secretary-General's Special Envoy, Climate Ambition and Solution inviting applicant to attend the summit, which is attached as **Annexure A-2**.
18. Ld. counsel for applicant has also filed on record the copy of order dated 30.03.2022 passed in CrI.M.A. 5787/2022 (Bail Application No. 2484/2019) by the Hon'ble High Court of Delhi and copy of order dated 26.11.2022 passed by this court whereby applicant was permitted to travel to Dubai and Abu Dhabhi w.e.f. 31.03.2022 till 06.04.2022 and to Dubai from 01.12.2022 to 08.12.2022 as Annexures A-3 and A-4 and he has returned to India. Further, applicant has been elected 8 times as the member of Legislative Assembly of State of Karnataka and is currently serving as the Deputy Chief Minister of State of Karnataka. Therefore, possibility of applicant fleeing from India are quite remote.
19. Further Ld. Counsel for applicant/accused has also filed on record copy of the order dated 22.11.2023 passed by Ld. Special Court(Economic Offences), Bangalore in CC no. 30798/21, which is dealing with the predicate offence, whereby applicant has been permitted to travel to Dubai to attend the aforementioned conference from 29.11.2023 to 03.12.2023.

20. The contention of the Ld. SPP for ED that applicant has made false assertion regarding criminal antecedents deserves to be rejected as criminal antecedents means that “there should be some prior conviction of the applicant in some criminal case or he should have been charged with some offence in a criminal case”. However, Ld. SPP for ED has not brought on record any facts to show prior conviction of the applicant or he being charged in any criminal matter by any court in India. Therefore, there is no material on record to show that applicant has having any criminal antecedents.

21. In the facts and circumstances, there is no impediment in allowing the application of applicant. Hence **the application filed by applicant/accused D.K.Shivakumar seeking permission to travel abroad is allowed and he is permitted to travel to Dubai w.e.f. 29.11.2023 till 03.12.2023 subject to following conditions: –**

(i) Applicant/Accused A-1 shall furnish FDR of Rs.5 Lacs in his name before this court prior to his travel.

(ii) Applicant/Accused A-1 shall file his complete travel itinerary i.e. Date of departure and return, the place where he is going to stay in Dubai, the address of his stay alongwith telephone/mobile number.

(iii) Applicant shall file on record permission granted by the Government of India prior to his departure.

(iv) Applicant/Accused A-1 shall not try to contact any of co-accused or try to influence any of the wit-

nesses connected with the present case while travelling abroad.

(v) Applicant/Accused A-1 shall intimate his return to this court.

Application stands disposed of.

Announced in the open court

Dated: 25.11.2023

(Vikas Dhull)
Special Judge (PC Act) (CBI)-23
(MPs/MLAs Cases) RADC
New Delhi