

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM(M) No.235/2023 c/w
i)CRM(M) No.234/2023
ii)CRM(M) N.236/2023
iii)CRM(M) No.308/2023
iv)CRM(M) No.309/2023
v)CRM(M) No.504/2022

MADHU BAKSHI

... PETITIONER(S)

*Through: - Mr. Tanveer Ahmad Mir, Advocate, with
Mr. Arfat Rashid, Advocate.*

Vs.

**ANTI CORRUPTION BUREAU
KASHMIR & ANR.**

...RESPONDENT(S)

*Through: - Mr. T. M. Shamsi, DSGI, with
Ms. Zeenaz Akhter, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER (ORAL)

08.11.2023

CRM(M) No.235/2023 c/w
i)CRM(M) No.234/2023
ii)CRM(M) Nos.236/2023 & 504/2023

The reply filed on behalf of respondent CBI is taken on record.

Further pleadings in the case shall be completed by the parties by next date of hearing.

List on 23.02.2024. Interim direction, if any, shall continue till next date of hearing before the Bench.

CRM(M) No.308/2023

CRM(M) No.309/2023

1) By this common order, the afore-numbered two petitions, one filed by Raj Singh Gehlot and another filed by Aman Gehlot, challenging order dated 19.06.2023 passed by learned Additional

Special Judge, Anti-corruption, Kashmir Srinagar, are proposed to be disposed of. Vide the impugned order, the applications filed by the petitioners seeking release of their passports have been dismissed.

2) It appears that FIR No.15/2019 for offences under Sections 120-B and 420 of RPC and Section 5(1)(c) & (d) read with Section 5(2) of the J&K Prevention of Corruption Act was registered by respondent No.1-Anti-corruption Bureau, Central Kashmir. During the investigation conducted by respondent No.1, the allegations of criminal conspiracy, criminal breach of trust, cheating and criminal misconduct by public servants were established and it found that an amount of Rs.35 crores out of loan amount of Rs.100 crores was misappropriated by the accused including the petitioner Raj Singh Gehlot, Director M/S APHL, in connivance with other accused persons. After conducting part investigation of the case relating to disbursement of Rs.35 crores out of first term loan of Rs.100 crores, respondent No.1 filed charge sheet for offences under Section 120-B, 409, 420 RPC and Sections 5(1)(c) and 5(1)(d) read with Section 5(2) of the J&K PC Act against petitioner Raj Singh Gehlot and co-accused Mohan Singh, Ms. Sheela Gehlot, Ms. Madhu Bakshi, M/S Aman Hospitality Pvt. Ltd. (through its Director Raj Singh Gehlot), M/S Ambience Pvt. Ltd (through its promoter Director, Mohan Singh), M/S NGR Consultant Pvt. Ltd (through its promoter Director Raj Singh Gehlot), M/S Raj Commercial & Agencies (through its proprietor Raj Singh Gehlot), Rakesh Kumar Kharyal, the then Branch Head, J&K Bank Ltd., Ansal Plaza Branch, New Delhi and Kuldeep

Kumar Gupta, the then Loan Manager, J&K Bank Ltd., Ansal Plaza Branch, New Delhi. The charge sheet was laid before the Court of Special Judge, Anti-Corruption, Srinagar. However, further investigation of the case was transferred to Central Bureau of Investigation. Accordingly, case No.RCBD12021E004 dated 02.09.2021 for offences under Section 120-B RPC and Section 5(1)(d) read with 5(2) of J&K PC Act was registered at Central Bureau of Investigation, Banking Securities Fraud Branch, New Delhi, and the investigation is stated to be going on.

3) It appears that during investigation of the case, respondent No.1 conducted search at the residence of petitioner Raj Singh Gehlot on 26.07.2019 and the passports of both the petitioners were seized. The passport of petitioner Raj Singh Gehlot is stated to have expired on 18.05.2021. After transfer of investigation of the case to respondent No.2-CBI, all the documents including seized passports of the petitioners were handed over to CBI. According to respondent CBI, a look out circular has also been issued against petitioner Raj Singh Gehlot.

4) I have heard learned counsel for the parties and perused the record of the case.

5) It seems that the petitioners had approached the Court of learned Additional Special Judge, Anti-corruption, Srinagar, for release of the passports but the said Court has refused to grant the application of the petitioners on the ground that the proceedings in the case have been

stayed by this Court in connected petitions filed under Section 482 of the Cr. P.C.

6) So far as the seizure of passports by the Investigating Agency is concerned, admittedly, the same has not been done as a condition for grant of bail to these petitioners. In fact, petitioner Aman Gehlot is not even an accused in the challan pending before the trial court or even in the investigation conducted so far. The Supreme Court in the case of **Suresh Nanda vs. Central Bureau of Investigation**, (2008) 3 SCC 674, has held that even if seizure of passport by the Investigating Agency while exercising power under Section 102 of the Cr. P. C may be permissible within the authority of the said provision, it does not have power to retain or impound the same because the same can only be done by the Passport Authority under Section 10(3) of the Passports Act. It has been further held that if the police seizes a passport, which it has power to do under Section 102 of Cr. P.C, the same must be sent to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Passports Act, whereafter the Passport Authority would decide whether or not to impound the passport.

7) In the instant case, the Investigating Agency has not forwarded the passports of the petitioners to Passport Authority after their seizure for impounding nor is it the case of the respondent Investigating Agency that the said agency desires to have the passports of the

petitioners impounded. In fact, the respondent CBI has, in its reply, fairly submitted that they shall abide by the orders that may be passed by the Court and they have not sought rejection of these application.

8) In view of the above, both the petitions are allowed and the respondent No.2 is directed to release the passports of the petitioners Raj Singh Gehlot and Aman Gehlot after retaining photocopies thereof.

9) Both the petitions (CRM(M) No.308/2023 and CRM(M) No.309/2023) shall stand **disposed** of.

(Sanjay Dhar)
Judge

Srinagar
08.11.2023
"Bhat Altaf, PS"

