

Wu Chuannan & Others

v.

State of Chhatisgarh

(Supreme Court Of India)

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR HON'BLE MR.
JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Criminal Misc. Petition No. 8824 & 8825 Of 2013 In CrI.A.1286 Of 2010 | 12-08-2013

1. These Criminal Miscellaneous Petitions, filed on behalf of (1) Wu Chuannan, (2) Liu Gaoxuan and (3) Wang Weiqing, applicants - appellants Nos. 1, 2 and 3 respectively, praying for permitting the applicants to return to China during the pendency of the proceedings before the trial Court. It is stated that the applicants were constrained to move the CrI.M.Ps. for necessary directions before this Court as in the earlier application, whilst releasing the applicants on bail, certain conditions had been imposed by this Court.

2. The reasons stated in the CrI.M.Ps. indicate that all the three applicants are employees of the Chinese Company called SEPCO, which had been granted EPC contract by BALCO, dated 20th August, 2007, to construct a 1200 MW power plant at Korba, Chhatisgarh, which included construction of the chimney. It appears that, during the construction, the chimney collapsed which resulted in death of certain labourers. Despite the fact that the employees although were employees of SEPCO, were not immediately responsible for construction of chimney, still the proceedings were initiated against them under Section 304 and other Sections of Indian Penal Code, 1860.

3. On earlier occasion, by order, dated 30th April, 2010, this Court has permitted the applicants to visit China for specific reason. On 30th April, 2010, this Court directed release of the applicants on bail so that they are able to go back to China. However, whilst granting bail, the Consulate General of the People's Republic of China in Kolkata was directed to file an affidavit of undertaking that the applicants shall be present in Court during the trial. Now, the present CrI.M.Ps. have been filed, primarily, on the ground that all the applicants are family persons and they also employed in high positions in the

Company which would entail travel to countries outside China for the purposes of the business of the Company in which they are employed. A prayer is made that the applicants be permitted to leave India and to reside in China during the pendency of the trial subject to the condition that they shall make themselves available at any time as directed by the trial Court or by this Court. An affidavit has been filed by the applicants. The CrI.M.P. is accompanied by a letter issued by the Consulate General of the People's Republic of China in Kolkata in which it is stated that the applicants are now required to return to the headquarters of the organization as they would be required to oversee various project sites within or out of China and to handle on site-management responsibilities. It is further stated that the applicants will participate and be physically present as and when he is summoned/required by the competent trial courts. The letter further states as under:

"In this regard, we the Consulate of the People's Republic of China in Kolkata, hereby undertakes and assures to the Hon'ble High Court that we will ensure the availability of the above mentioned Chinese citizens for the duration of the trial and will also ensure that they shall co operate with the investigating agencies in India.

Your sincerely,

Consulate General in Kolkata

Dated: February 21,2010

Place: Kolkata"

4. The aforesaid undertaking, contained in the letter dated 21st February, 2010, is reiterated in the letter dated 7th February, 2013 in the following words:

"The Consulate General of People's Republic of China in Kolkata avails itself of this opportunity to renew to the Honorable Supreme Court of India of its assurance of highest consideration dated 21st February, 2010.

Kolkata, February 7, 2013"

5. It is further stated by the learned counsel for the applicants that the applicants will furnish the bank guarantee in the sum of Rs.1 crore in respect of each applicant within two weeks from today. The bank guarantee shall be kept alive during the pendency of the trial or till the applicants return back to India to face the trial. The trial Court shall intimate the representative of the applications at least four weeks before the date fixed when they would be required to attend the trial court.

6. In view of the aforesaid, we allow the Crl.M.Ps. and permit the applicants to return to China on the condition that the applicants comply with the conditions stated above and in accordance with the undertaking given by the applicants themselves as well as the Consulate General of the People's Republic of China in Kolkata to ensure that the applicants are available to face trial as and when required on being given one month's clear notice.

7. The trial Court is now directed to release the passport of the applicants forthwith so that they are able to travel to China.

8. The Crl.M.Ps. are disposed of in the aforesaid terms.