

CC No. : 06/2017
RC No. : 217-2013-A-0003
Branch : CBI/AC-II/New Delhi
U/S : 120B r/w Sec. 420 IPC and
Section 7, 8, 9, 12 & 13(2) r/w
13(1)(d) of P.C.Act, 1988
CBI Vs. S.P.Tyagi & Ors.

24.02.2020

ORDER

1. Vide this order, I shall be disposing of an application filed by counsel for accused Christian James Michel for permission to accused to make ISD Calls and to meet foreign and Indian attorneys in jail, during the judicial custody.
2. Reply is filed by CBI.
3. Ld. Counsel for the accused submits that accused is British citizen and does not have any near relatives or friends in India. It is further submitted that accused may be allowed to meet his lawyers in Jail during the period of his judicial custody so that the accused will be in a position to explain his case which is very much necessary for his defence during the trial of the case. It is also submitted that accused is facing prosecution in different parts of the world and not all the cases are handled by Indian lawyers. It is also submitted by Id. Counsel for accused that necessary directions may be passed to the Superintendent of Tihar

Jail permitting the accused to meet Rosemary Patrizzi, foreign lawyer in accordance with his right to meet with his Indian attorneys in Jail during judicial custody. It is submitted that accused intends to meet the aforesaid foreign lawyer for discussing his cases which are pending before different courts outside India. Ld. Counsel for accused also submitted that although he has made submission in his application for permission to make ISD calls, however he is not pressing for any relief from this Court, regarding aforesaid prayer.

4. On the other hand Id. Counsel for the CBI contended that the issue regarding making the requisite ISD calls is pending before Hon'ble High Court of Delhi in W.P (Crl.) 806/2019 wherein the order passed by this Court on 14.01.2019 and 21.01.2019 are under challenge and the same may not be adjudicated by this Court considering the judicial discipline.

5. It is further submitted by Id. Counsel for CBI that the prison rules restrict the scope of legal interviews with the inmate for the legal practitioners under the Advocates Act, 1961 and the Advocate Act, 1961 do not recognize any foreign lawyer to practice in India, including litigation/ non-litigation work. As such, while the Advocates of the applicant are entitled to meet him in Jail subject to Jail rules, no such permission can be granted to any foreign lawyer.

6. I have gone through the material on record.

7. So far as prayer of accused permitting him to make ISD Calls is concerned, the matter in this regard is pending before Hon'ble High Court. The Counsel for accused has himself stated that he is not pressing his prayer for permission to make ISD calls. Hence, I need not delve on this issue.

8. Now turning to second submission of Id. Counsel for accused regarding permission to foreign lawyer to have legal interview with the accused. It is relevant to reproduce Rule 606 and Rule 627 of Delhi Prison Rules, 2018 -

“606. A prisoner may be allowed interview twice a week.

627. (i) Under-trial and civil prisoners shall be granted all reasonable facilities to interview, or write letters to their family members, friends and legal advisers.

(ii) Every interview between an under-trial prisoner and his legal adviser shall take place within sight, but out of hearing, of a prison official. A similar concession shall be allowed by the Superintendent in the case of an interview with any near relative of an under-trial.

(iii) Any legal practitioner who abuses the process of interview with prisoners shall be debarred from interview for such time as the Inspector General may direct.

(iv) The Inspector General will also inform the concerned Bar Council regarding the conduct of the legal practitioner, for appropriate action under the law.

(v) When any person desires an interview with an under-trial prisoner in the capacity of the prisoner's legal adviser, he shall apply in writing, giving his name and address and

specifying the purpose of the interview. He must satisfy the Superintendent of Prison that he is the bona-fide legal adviser of the prisoner with whom he seeks interview and that he has legitimate business with him.

(vi) Any bona-fide written communication prepared by an undertrial prisoner as instructions to his legal adviser (i.e., a legal practitioners within the meaning of the Advocates Act, 1961) may be caused to be delivered personally to such legal advisor, or to his authorized nominee, by the Superintendent of Prison.

(vii).....

(viii).....”

9. It is clear from the bare reading of aforesaid rules that Legal Practitioners registered under the Advocates Act, 1961 are permitted to meet the accused/ have legal interviews as per the aforesaid Jail Rules. So far as foreign lawyers are concerned, the Advocates Act, 1961 do not recognize or permit foreign lawyers to practice in India in the litigation side. In the judgment **Bar Council of India V/s A. K. Balaji & others (2018) 5 SCC 379** Hon'ble Supreme Court observed that the foreign lawyers do not have right to practice in India either on litigation or non litigation side, however, they can appear before the Court with the permission of the Court. No application has been filed by Rosemary Patrizzi seeking permission to represent accused Christian James Michel before this Court. The aforesaid rules make it clear that foreign lawyers are not entitled to have legal interviews with the inmate/prisoner of Tihar Jail, as legal Advisor. Thus, Ms. Rosemary Patrizzi cannot be allowed to have legal interview with accused Christian James Michel as Legal

Advisor.

10. A foreign lawyer if intend to meet/ visit the accused as a friend, same can be allowed as per Jail rules. Vide order 12.02.2019, Ms. Rosemary Patrizzi was allowed to meet accused Christian James Michel when she intended to meet accused Christian James Michel as friend. It is further noted that no detail of cases pending outside India, regarding which the accused want to have discussion with aforesaid foreign lawyer, during legal interviews, has been mentioned in the application.

11. The accused is already being represented by three Indian lawyers who are entitled to meet/ have legal interview with the accused as per jail rules. Hence, no specific directions are needed in this regard.

12. The application filed by accused is thus disposed of.

(Arvind Kumar)
Spl. Judge (PC Act),CBI-10
Rouse Avenue Court
New Delhi/ 24.02.2020

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24.02.2020 (3.05 p.m.)

Present: Sh. Sriram Parakkat and Ms. Nayan Maggo, Ld. Counsels
for applicant/accused Christian James Michel. .

Vide separate order, application filed by counsel for accused Christian James Michel for permission to accused make ISD Calls and to meet foreign and Indian attorneys in jail, during the judicial custody is disposed of.

(Arvind Kumar)
Spl. Judge (P.C.Act) CBI-10
Rouse Avenue Courts
New Delhi 24.02.2020