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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4417/2026**

DIRECTORATE OF ENFORCEMENT

.....Petitioner

Through: Mr. Zoheb Hossain, Spl. Counsel for
ED with Mr. Vivek Gurnani Panel
Counsel, Mr. Pranjal Tripathi, Mr.
Kanishk Maurya, Mr. Siddharth Bajaj,
Advs.

versus

**MS VIVO MOBILE COMMUNICATION AND ORS GUANGWEN
KUANG @ ANDREW**

.....Respondent

Through: Mr. N. Hariharan, Sr. Adv. with Mr.
Priyank Ladoia, Mr. Kshitiz Rao, Mr.
Arjun Narang, Mr. Puneet Dhanoa,
Ms. Ananya Singh, Mr. Punya Rekha
Angara, Mr. Arjan Singh Mandla, Mr.
Aman Akhtar, Ms. Vasundhara N.,
Ms. Vasundhara Raj Tyagi, Advs

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

% **09.07.2026**

1. This hearing has been done through hybrid mode.

CRL.M.A. 18756/2026

2. The present application has been filed by the applicant under the provisions of the Prevention of Money Laundering Act, 2002 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023(hereinafter referred to as the 'BNSS') seeking permission to travel to Guangzhou, China for a temporary period and for release of his passport.

3. Learned senior counsel appearing for the applicant submits that the



applicant seeks permission to travel to Guangzhou, China solely on account of the critical medical condition of his 82-year-old father, who has suffered a right cerebellar haemorrhage with multiple life-threatening complications and is presently on continuous life support. It is submitted that the medical condition of the applicant's father has further deteriorated and the applicant wishes to be with him during what may be the final days of his life. It is contended that the request is founded purely on humanitarian considerations.

4. Learned senior counsel further submits that the applicant has throughout cooperated with the investigation conducted by the Directorate of Enforcement and has regularly appeared before the learned Special Court. It is submitted that the applicant has never violated any condition imposed upon him and undertakes to return to India within the time permitted by this Court. It is also submitted that the applicant has furnished an undertaking through his employer company assuring his return and is willing to comply with any further condition that may be imposed by this Court.

5. Learned senior counsel further places reliance upon the judgment of the Hon'ble Supreme Court in ***Wu Chuaannan & Ors. v. State of Chhattisgarh, (2015) 13 SCC 119***, to contend that even foreign nationals facing criminal prosecution can be permitted to travel abroad where sufficient safeguards exist to secure their return.

6. *Per contra*, learned Counsel appearing for the Directorate of Enforcement opposes the application. It is submitted that the applicant is a Chinese national facing prosecution under the provisions of the Prevention of Money Laundering Act in a case involving alleged proceeds of crime amounting to approximately ₹2,02,41,17,72,292.89. It is submitted that the gravity of the allegations, coupled with the magnitude of the alleged money



laundering, distinguishes the present case from ordinary criminal prosecutions.

7. Learned Counsel further submits that there exists no extradition treaty between India and the People's Republic of China. Consequently, in the event the applicant does not return after travelling abroad, securing his presence before the learned Trial Court would become virtually impossible. It is further submitted that the undertaking furnished on behalf of the applicant company is vague and does not cast any legally enforceable obligation upon the employer company to ensure the applicant's return.

8. It is also submitted that the reliance placed upon **Wu Chuaannan** (*supra*) is misplaced. Learned counsel submits that in the said case, the Hon'ble Supreme Court had granted permission after taking into consideration several distinguishing safeguards, including previous compliance by the accused with earlier travel permissions, furnishing of a bank guarantee of ₹1 crore, a categorical undertaking by the employer company guaranteeing the presence of the accused during trial, and, significantly, a specific assurance furnished by the Consulate General of the People's Republic of China, Kolkata. It is submitted that none of these safeguards exist in the present case.

9. I have heard learned counsel for the parties and have considered the submissions made.

10. This Court is conscious of the humanitarian circumstances projected by the applicant regarding the medical condition of his father. However, while considering an application seeking permission to travel abroad during the pendency of criminal proceedings, humanitarian considerations alone cannot be determinative. The Court is required to balance such considerations with



the interest of justice and the necessity of securing the presence of the accused throughout the proceedings.

11. In the present case, the applicant is admittedly a foreign national facing prosecution under the provisions of the Prevention of Money Laundering Act in respect of allegations involving proceeds of crime amounting to approximately ₹2,02,41,17,72,292.89. The allegations relate to a serious economic offence of an exceptionally high magnitude.

12. Another significant factor which cannot be ignored is the admitted position that no extradition treaty exists between India and the People's Republic of China. In such circumstances, the apprehension expressed by the prosecution that the applicant may not return to India cannot be brushed aside as merely speculative. If the applicant fails to return, the possibility of securing his presence before the learned Trial Court would become highly uncertain.

13. The medical records relied upon by the applicant pertain to treatment allegedly being administered in the People's Republic of China. It is an admitted position that there exists no Mutual Legal Assistance Treaty in criminal matters between India and the People's Republic of China. Consequently, there exists no effective mechanism through which the authenticity of the medical documents regarding the applicant's father can be verified within a reasonable period of time. In the absence of such a mechanism, the only course available would be by way of issuance of Letters Rogatory or a judicial request through diplomatic channels. Such a process is time consuming and may take several months, and in some cases approximately a year, before any response is received.

14. The Hon'ble Karnataka High Court, in ***Hu Xiaolin v. State of***



Karnataka, 2024 SCC OnLine Kar 12453, while considering an application filed by a Chinese national seeking permission to travel to China during the pendency of criminal proceedings, examined the provisions of the Exit and Entry Administration Law of the People's Republic of China. The Hon'ble Court took note of Article 23 thereof, which, *inter alia*, provides as under:

“Article 23 Aliens belonging to any of the following categories shall not be allowed to leave China:

(1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's Court;

(2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; and

(3) persons who have committed other acts in violation of Chinese law who have not been dealt with and against whom the competent authorities consider it necessary to institute prosecution.

Those who are barred from leaving China are defendants in criminal cases or criminal suspects inter alia and persons who are notified by a people's Court, persons who have committed acts in violation of Chinese law. Aliens are those who are not Chinese nationals.”

15. After considering the aforesaid statutory framework, the Hon'ble Karnataka High Court observed that where the laws prevailing in China themselves prohibit the exit of foreign nationals facing criminal proceedings, laws of India cannot be made flexible on any score whatsoever, while considering a similar request made by a Chinese national facing criminal prosecution in India. The Hon'ble Karnataka High Court held as under:

*“12. The petitioner being a Chinese national is undoubtedly aware of the law that prevails in China in treatment to a foreign national or an alien, as described in its laws. **If laws in China prohibit such exit of a foreign national under the aforesaid circumstances, laws of India cannot be made flexible on any score whatsoever, as it is a case of a Chinese national who is involved in multiple crimes.** Therefore, if petitioner is permitted to move out of the shores of the*



nation, despite plethora of crimes pending against her, it would become impossible to conclude trial, as it would be permitting her to flee justice and create a dent in the majesty of law. The High Court of Kerala granting permission to travel will not bind this Court to consider the issue on merits, as the order passed by the High Court of Kerala does not indicate the crimes or the practice prevailing in China to other nationals including Indian nationals. Therefore, seeking permission to travel abroad does not merit any consideration in the peculiar facts of this case.”

16. Though the said observations were made in the facts of that case, the principle assumes significance in the present matter as well. In the absence of any effective mechanism for securing his return, the legal position prevailing in the destination country constitutes a relevant circumstance which this Court cannot disregard while assessing the risk of non-return and the adequacy of the safeguards offered by the applicant.

17. The aforesaid principle also deserves consideration from the standpoint of reciprocity. While this Court is not called upon to apply the municipal laws of another nation, the legal position prevailing in the country to which permission is sought cannot be regarded as wholly irrelevant. If the legal regime of that foreign country itself does not ordinarily permit foreign nationals facing criminal proceedings to leave its territory, this Court would not be adopting a substantially liberal approach in favour of a foreign national facing prosecution before an Indian Court, particularly when no effective legal mechanism exists to secure his return in the event of non-compliance.

18. This Court also finds merit in the submission that the undertaking furnished on behalf of the applicant does not provide any effective or legally enforceable assurance securing his return. The undertaking merely records the applicant's intention to return and does not impose any binding obligation upon the employer company in the event of breach. Equally, no undertaking



or assurance has been furnished by the Consulate General of the People's Republic of China or any other diplomatic authority.

19. The reliance placed upon the judgment of the Hon'ble Supreme Court in ***Wu Chuaannan & Ors.*** (*supra*) is of no assistance to the applicant. The said judgment was rendered in entirely different facts where the Supreme Court granted permission only after recording the existence of multiple safeguards, namely previous compliance by the accused with earlier travel permissions, furnishing of a substantial bank guarantee, a specific undertaking by the employer company guaranteeing the presence of the accused during trial, and a categorical assurance by the Consulate General of the People's Republic of China ensuring their return to India. The present case lacks all such safeguards and is, therefore, clearly distinguishable.

20. Apart from the safeguards already noticed hereinabove, the Hon'ble Supreme Court had also taken into consideration the categorical undertaking furnished by the employer of the accused persons, which was admittedly a Government owned enterprise under the Government of the People's Republic of China. The said undertaking constituted one of the factors which weighed with the Hon'ble Supreme Court while permitting the accused persons to travel abroad. In the present case, however, the undertaking has been furnished by a private employer company. Such undertaking neither emanates from any governmental authority nor creates any legally enforceable obligation capable of securing the applicant's return to India.

21. Having regard to the seriousness of the allegations, the enormous magnitude of the alleged proceeds of crime, the applicant's status as a foreign national, the absence of an extradition treaty between India and China, and the absence of any effective safeguard capable of ensuring the applicant's



return to India, this Court is not satisfied that permission to travel abroad deserves to be granted.

22. Having regard to the seriousness of the allegations, the enormous magnitude of the alleged proceeds of crime, the applicant's status as a foreign national, the absence of any extradition treaty or Mutual Legal Assistance Treaty in criminal matters between India and the People's Republic of China, this Court is of the considered opinion that no case for grant of permission to travel to Guangzhou, China is made out.

23. Accordingly, the present application seeking permission to travel to Guangzhou, China is dismissed.

24. Nothing observed herein shall be construed as an expression on the merits of the pending prosecution.

25. The application stands disposed of.

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26. List on 14.09.2026.

MADHU JAIN, J

JULY 9, 2026/p/prg