

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-17854 of 2015

Date of decision: 29.05.2015

Ms. Urvi Agarwal

-----Petitioner (s)

V/s

State of Haryana

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. K.S. Nalwa, Advocate and
Ms. Bonita Singh, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 CrPC is for quashing of order dated 6.5.2015 passed by Judicial Magistrate Ist Class, Rohtak and the order dated 20.5.2015 passed by Additional Sessions Judge, Rohtak, whereby the revision petition filed by the petitioner has been dismissed.

On 28.5.2015, after recording the contention of learned counsel for the petitioner, notice was issued to the State.

At the time of hearing i.e. on 28.5.2015, Mr. D.K. Tuteja, Advocate had put in appearance of behalf of the

complainant. However, today, no one has put in appearance on behalf of the complainant.

As per the averments made in the petition, the petitioner was inducted as a Director of M/s Jop International Limited, 45/77, Panjabi Bag, West , New Delhi, but has falsely been implicated in FIR No.32 dated 3.2.2015 under Sections 406, 420, 506, 34, 120B IPC registered at Police Station Urban Estate, Rohtak. Her parents namely Mr. Bharat Aggarwal (father) and Mrs. Shyama Aggarwal (mother) are the other Directors of the company. The petitioner is pursuing her course of Master of Science in Marketing Management from ESADE Business School, Barcelona, Spain and her examinations are scheduled in June, 2015. Since there was an FIR against the petitioner as well as her parents, her passport was seized. Since the petitioner is studying abroad, therefore, in order to appear in her examination scheduled in June, 2015, the petitioner moved an application before Judicial Magistrate 1st Class, Rohtak for the release of her passport on *spurdari* and further sought permission to travel Spain to complete her ongoing studies. However, learned Magistrate, vide order dated 6.5.2015, dismissed the said application.

Aggrieved against the aforesaid order dated 6.5.2015, the petitioner preferred a revision petition before learned Additional Sessions Judge, Rohtak. The revision petition was also dismissed, vide order dated 20.5.2015, with the observations

that no schedule of examination or any other details have been furnished.

It is against the aforesaid orders dated 6.5.2015 and 20.5.2015, the petitioner has preferred the present petition for quashing under Section 482 CrPC.

Learned counsel for the petitioner submits that the *bona fide* on the part of the petitioner is duly established from the fact that the FIR was registered on 3.2.2015 and the petitioner who was pursuing her studies in Spain, came back to India on 25.4.2015 to join and cooperate the investigations. The Sessions Court granted anticipatory bail to the petitioner on 16.3.2015. Learned counsel further argued that the investigating officer never summoned her, as there was nothing to investigate, especially when all the evidence, which was documentary in nature, was already with the police. Even the application seeking cancellation of bail was also dismissed vide order dated 30.4.2015. Learned counsel further submits that though there was no requirement to seize the passport of the petitioner, but still her passport was seized and therefore, the petitioner could not fly back to Spain to pursue her studies, as per the schedule of the college. In this manner, she has lost three valuable weeks of her final semester of the Master of Science in Marketing Management and could not attend classes.

Learned counsel for the petitioner submitted that the petitioner is a bona fide student and she does not intend to stay in

Spain for the period beyond the schedule of examination. He further submits that since the examinations are fixed somewhere in June, 2015, the petitioner be released her passport and she be permitted to leave the country upto 31st August, 2015 and in any case, she would report back on or before 1.9.2015. It has been further contended that this Court may put any conditions, which are practical and reasonable in the facts and circumstances of the present case.

However, learned State counsel submits that the petitioner is not entitled for any discretionary relief for the reason that the petitioner along with other co-accused i.e. her parents has duped a huge amount of people and there is apprehension that she may not return back. It would hamper the trial.

Considering the fact that the petitioner is pursuing her studies from ESADE Business School, Spain even before the registration of the present FIR, it is established that she is pursuing her course bonafidely and has not created a ground to go abroad.

In similar circumstances, Hon'ble the Apex Court in the case of **Srichand P. Hinduja v. State through CBI, New Delhi 2002(3) RCR (Crl.) 186**, as an interim measure, has permitted the appellant-therein to go abroad by laying down certain conditions including execution of a bond with a bank guarantee and it was ordered that the appellant-therein shall remain present before the Special Judge as and when their

presence is needed. A rider was also imposed that in case there is any violation of the conditions, it would be open to the Court to pass an appropriate order for cancellation of bail of the appellant and this interim measure was specified upto a particular date. Similarly, in **Arun Kapoor v. State of Haryana 2004(4) RCR (Criminal) 594**, this Court has considered the prayer for release of passport, as the petitioner-therein had to go abroad in connection with the business of the company. An application was moved before the trial Court for release of passport, but the same was declined. Even the criminal revision petition filed against the order passed by the Magistrate was also dismissed. However, this Court, on a petition filed under Section 482 CrPC, while relying upon the case of **Srichand P. Hinduja v. State through CBI, New Delhi** (*supra*) has observed as under:-

“10. It is not in dispute that the petitioners are having business commitments to fulfill and they have to go abroad for business dealings. It is also not in dispute that the petitioners do go abroad for business dealings. It is also not in dispute that contracts have to be procured from abroad to carry out the work here. Besides, the petitioners had earlier also gone abroad in terms of the permission granted by this Court on 1.8.2003 and they have returned and re-deposited their passports.

*11. The Hon'ble Supreme Court in **Srichand P. Hinduja v. State through C.B.I., New Delhi, 2002(3) RCR (Crl.) 186 (SC): AIR 2002 Supreme Court 410** granted permission to go abroad to the accused in the said case. The case related to*

offences punishable under Sections 120-B and 420 Indian Penal Code as also under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. In the said case also, a plea was raised that if the appellants therein were permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return back to India to face the trial. It was noticed, that the appellants therein were Indian Nationals at the time of registration of the FIR and thereafter they had acquired British and Swiss Nationalities. The Hon'ble Supreme Court, after considering the facts and circumstances of the case as an interim measure allowed the accused therein to go abroad subject to their furnishing adequate sureties.

12. *This Court in **Brij Bhushan Singal v. Central Bureau of Investigation, 1994(3) RCR (Crl.) 498 (P&H)** which is a case where the Special Judge granted bail to accused therein but impounded his passport to prevent him from going abroad, held that it was competent to review the order under Section 482 Criminal Procedure Code and order released of the passport. Accordingly, the accused therein was permitted to go abroad and then return within four months subject to his furnishing security in the sum of Rs.25 lacs."*

Permission to go abroad during trial should not invariably be declined unless there are reasons to believe that such permission is being sought for oblique considerations. In **Anjal Kumar @ Angel Kumar v. State of Punjab 2010 (1) RCR (Criminal) 201**, in somewhat similar circumstances, where a

person was facing the criminal trial and was declined permission to go abroad, as the accused was facing trial in case under Section 420 , 406, 403, 34 IPC, the accused was allowed to go abroad and the Court observed as under:-

“3. *Heard.*

The cardinal principle of criminal jurisprudence, as applies in this country, is that every person is innocent till proved guilty and further that the Court presumes a human being to behave normally and this presumption continues till such time it is proved to the contrary. The fundamental right or civil right cannot be curtailed only if a criminal case is pending against a person.

4. *In totality of the facts and circumstances of the case and in view the ratio laid down in **Naginder Singh Rana v. State of Punjab, 2004(3) RCR (Criminal) 912**, the order declining permission to the petitioner to go abroad does not appear to be correct. Thus, the impugned order dated 12.10.2009 is set aside. The petitioner is permitted to go abroad (Dubai/Abu Dhabi) for 5-6 days on the condition that he shall furnish security to the tune of Rs.4 lacs with one surety in the like amount to the satisfaction of the Court concerned. On the undertaking, as mentioned above, and on furnishing the security, as is ordered to the satisfaction of the Court concerned the petitioner shall be allowed to go abroad. He is directed to return to India on 7.11.2009.”*

In view of the observations made here-in-above and in order to avoid any apprehension, as put forward by learned State

counsel, a direction is issued to the trial Court/Ilalaqa Magistrate/Duty Magistrate to pass an appropriate order to return the passport of the petitioner and shall permit her to go abroad, for which, the petitioner shall execute a personal bond in a sum of Rs.20 lacs with an undertaking that she would report back on or before 1.9.2015. The trial Court/Ilalaqa Magistrate/Duty Magistrate may further impose any other condition which it may deem fit and proper in the peculiar facts and circumstances of the case. It is made clear that after completion of her examinations, on her return from abroad, the petitioner shall return back her passport, as per the directions of the trial Court/Ilalaqa Magistrate/Duty Magistrate.

Accordingly, the present petition is allowed and the impugned order dated 6.5.2015 passed by Judicial Magistrate Ist Class, Rohtak as well as order dated 20.5.2015 passed by Additional Sessions Judge, Rohtak are quashed.

May 29, 2015
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(HARI PAL VERMA)
JUDGE