

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

Criminal Misc. No. M-11130 of 2016

Date of Decision:-07.04.2016

Shyama Aggarwal

...Petitioner

Versus

State of Haryana

...Respondent

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. Deepak Girotra, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G., Haryana.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 17.12.2015 passed by learned Judicial Magistrate 1st Class, Rohtak, whereby the application moved by the petitioner namely Shyama Aggarwal wife of Bharat Aggarwal, resident of 45/77, Punjabi Bagh West, New Delhi for release of her passport on superdari and permission to travel to South Africa was declined.

Learned counsel for the petitioner contends that petitioner is one of the Directors in a company known as M/s JOP

International Limited. The said company has floated a scheme for built up flats in Sector 28, Rohtak. Apart from that the petitioner has entered into an agreement for their channel company i.e. Life Mantra with a foreign based company namely Ethnic Management, 2200 Smith Berry Road Suite 215. Pantego, TX-76013 through its Chief Executive Officer. As per the said agreement, the Ethnic Media Management, LLC (EMM) will provide certain professional services to Life Mantra in distribution of Life Mantra T.V. In furtherance of the said business, the petitioner in order to initiate their agreement with the Ethnic Media Management is required to travel to South Africa for a period of 15 days.

Though initially an application was made to go abroad i.e. from 28.12.2015 to 11.1.2016. However, as the permission was not granted by the Court, the petitioner had deferred the said visit and now she intends to go abroad from 11.4.2016 to 30.6.2016. Learned counsel for the petitioner submits that the FIR was registered on 3.2.2015 and the petitioner has been joining the investigation without any reservation and rather cooperated with the investigation without any hindrance. Accordingly, the police has submitted the challan on 2.4.2016. During the course of investigation, the investigating officer had collected her passport and the same has become part of the challan. Learned counsel for the petitioner further submits that in the similar

circumstances, the co-accused namely Urvi Agarwal, who is daughter of the petitioner and also a Director in the said company has been permitted to go abroad by this Court in **CRM-M No.17854 of 2015 titled 'Ms. Urvi Agarwal vs. State of Haryana'** decided on 29.5.2015, **CRM-M No.33160 of 2015 titled 'Ms Urvi Agarwal vs. State of Haryana'** decided on 31.10.2015 and **CRM-M No.5825 of 2016 titled 'Ms. Urvi Aggarwal vs. State of Haryana'** decided on 24.2.2016. Ms. Urvi Agarwal has already established her bona fide and has returned back to India with due intimation to the concerned Court. At present Urvi Agarwal is in France, of course for business purposes and the petitioner is also intends to join her in France or some other countries for business purposes. The petitioner is ready to undertake and to comply with any of the condition, which this Court or the learned trial Court may impose in the peculiar facts and circumstances of the case. However, she undertakes that the petitioner would return back to India on or before 30.6.2016. He further states that at different intervening period, the petitioner would remain in India and may be required to go abroad from time to time during this period.

Learned State counsel on instructions from ASI Anil Kumar states that the co-accused of the petitioner Urvi Agarwal is already abroad and there is possibility that the petitioner may fled away and not return back to India causing serious prejudice

to the interest of the number of complainants, who have invested their money in the project floated by the petitioner. However, he submits that in case the petitioner is still being permitted to go abroad, a heavy conditions be imposed upon her so that she may not fled away.

I have heard learned counsel for the parties.

This Court in the case of co-accused Urvi Agarwal in CRM-M No.17854 of 2015 has dealt with similar proposition and accordingly allowed the petitioner in that case to go abroad. In that case reliance was placed on the case of **Srichand P. Hinduja vs. State through CBI, New Delhi 2002(3) RCR (Criminal) 186**, wherein the Hon'ble Supreme Court 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."*

Accordingly, in view of the observations made herein-above and in order to avoid any apprehension, as put forward by learned State counsel, a direction is issued to the trial Court/Illaq Magistrate/ Duty Magistrate to pass an appropriate order to return the passport of the petitioner and to permit her to go abroad, for which, the petitioner shall execute a personal

bond in a sum of Rs.25 lacs with an undertaking that she would report back on or before 30.6.2016. She is further required to inform the learned trial Court immediately on her return from the foreign trip during 11.4.2016 to 30.6.2016. The trial Court/ Illaqa 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 visit to abroad, the petitioner shall return back her passport to the trial Court.

Accordingly, with the aforesaid directions the present petition is allowed and the impugned order dated 17.12.2015 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Rohtak is set aside.

April 07, 2016
Vijay Asija/Anjal

(HARI PAL VERMA)
JUDGE