

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

Criminal Misc. No.M-28732 of 2016
Date of Decision: 19.12.2016

Gurinder Singh @ Jagwinder SinghPetitioner(s)

Versus

State of PunjabRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. N.S. Dandiwal, Advocate
for the petitioner(s).

Mr. P.S. Madahar, AAG, Punjab.

HARI PAL VERMA, J. (ORAL)

Prayer made in the instant petition filed under Section 482 Cr.P.C. is for quashing of order dated 13.06.2016(Annexure P-5) passed by learned Judicial Magistrate Ist Class, Amritsar, whereby, the prayer of the petitioner to go abroad has been declined, with a further prayer to allow the petitioner to go abroad i.e. United Kindom (U.K.) to attend his ailing wife who is a patient of heart disease.

Learned counsel for the petitioner submits that the wife of the petitioner, namely, Karamjit Kaur is residing in United Kindom (U.K.) He relies upon a communication dated 09.03.2016 issued by *Stroud Practice* and signed by treating doctor Dr.R.M. Patel from Bentley Health Centre, Churchill Road, Walsall, WS2 OBA, showing therein that Karamjit Kaur has to attend surgery every week to check her INR level.

She also suffers from *lumbago with left sided sciatica(Disc prolapse), hypertension, knee problem, muscles ache and incontinence of urine*. He further submits that an FIR No.83 dated 20.12.2011 for offence punishable under Sections 307, 325, 323, 34, 427, 506, 148, 149 and 120-B IPC was registered against the petitioner at Police Station Tarkikka, Distt. Amritsar. Though, the petitioner was charged under Section 307 IPC along with other sections, but since the revision petition filed by the petitioner was allowed by this Court, Section 307 IPC was substituted by Section 326 IPC. Now, the case is pending for prosecution evidence since July 2014 and as against the total 17 witnesses cited by the prosecution, only 02 witnesses have been examined. In this manner, trial in the case will take sufficient long time to conclude. He further submits that though the petitioner remained on bail, but he has never misused the said concession, despite the fact that his passport was never impounded, which is still with him.

On the other hand, learned State counsel, on instructions from HC-Kamaljit Singh, submits that in case the petitioner is allowed to go abroad, there is a possibility that he will not return back and the very purpose of the trial would be frustrated. He further submits that in case permission is to be granted to the petitioner, some strict condition may be imposed upon him including heavy surety.

I have learned counsel for the parties.

Initially, the petitioner was booked for offence punishable under Sections 307, 325, 323, 34, 427, 506, 148, 149 and 120-B IPC,

but as on date, he is facing trial for offence punishable under Sections 308, 325, 323, 327, 427, 506, 148, 149 and 120-B IPC and the prosecution evidence started somewhere in July, 2014 and, thereafter, as against the total 17 witnesses cited by the prosecution, only 02 witnesses have been examined.

This Court in CRM-M No.17854 of 2015 titled as **“Urvi Aggarwal Vs. State of Haryana”** 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.”

It has not been disputed that wife of the petitioner is undergoing treatment for a heart ailment which can be taken note from the communication dated 09.03.2016 sent by *Stroud Practice* and signed by Dr.R.M. Patel from *Bentley Health Centre Churchill Road, Walsall, WS2 OBA*.

Permission for going abroad has been requested for three months. It is pertinent to mention here that the fact that the FIR was registered in the year 2011 has weighed into the mind of the learned Magistrate and, accordingly, the prayer of the petitioner to go abroad was declined.

It is not disputed that the wife of the petitioner is a patient of heart disease and the petitioner is facing trial for offence punishable under Sections 308, 325, 323, 327, 427, 506, 148, 149, 120-B IPC. The prosecution evidence started somewhere in July, 2014, but till date only 02 witnesses have been examined out of total 17 prosecution witnesses. Thus, trial in the case will take sufficiently long time to conclude. Taking into consideration the aforesaid cited judgments and the long trial being faced by the petitioner, he is granted permission to go abroad (U.K.) for a period of three months from the date of his release, so as to attend his ailing wife, however, subject to the following terms and conditions.

1. The petitioner shall execute a personal bond and two surety bonds in the sum of Rs.20 lacs to the satisfaction of the trial Court/Duty Magistrate.

2. The petitioner shall bind himself to return from abroad and appear immediately before the trial Court to facilitate further proceedings into the matter.

3. In case during the period the petitioner is abroad and the petition is listed for hearing, his personal appearance shall be exempted and he shall be permitted to appear through his counsel, subject to the following conditions:-

- i. petitioners shall be represented through counsel;
- ii. shall not delay/stall the trial proceedings;
- iii. shall not dispute their identity as accused;
- iv. shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel;

4. On return, the petitioner shall continue to be bound by the old bond and conditions imposed while releasing him on bail and the conditions imposed for his going abroad shall cease to be

operative.

5. *Petitioner shall also furnish an undertaking that he would report back to learned Magistrate on his arrival.*

However, it is also directed that the petitioner shall appear before the trial Court and shall furnish the aforesaid undertaking alongwith an affidavit about his schedule of visit abroad and return. The trial Court/Illaq 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.

With the aforesaid directions, the present petition stands disposed of.

19.12.2016
Anjal

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes/No