

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

**Criminal Misc. No.M-25948 of 2017
Date of Decision: 10.08.2017**

Avtar Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

& Criminal Misc. No.M-25952 of 2017

Sohan Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

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

Present:- Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gagandeep Singh Virk, Advocate
for the petitioner(s).

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Gaurav Sharma, Advocate
for the complainant.

HARI PAL VERMA, J.

This order shall dispose of two petitions i.e. CRM-M-25948-2017 and CRM-M-25952-2017, as both these petitions arise out of common FIR No.1 dated 8.3.2013 under Section 420 IPC, Police Station NRI, District Kapurthala and common prayer has been made in both these petitions.

Petitioners have filed these petitions under Section 482 CrPC seeking permission to go abroad i.e. U.K. during the pendency of proceedings in case FIR No.1 dated 8.3.2013 under Section 420 IPC, Police Station NRI, District Kapurthala.

In order to compile the facts of both these cases by way of common order, petitioner in CRM-M-25948-2017 namely Avtar Singh is being referred as petitioner no.1 whereas petitioner in CRM-M-25952-2017 namely Sohan Singh, who is father of Avtar Singh, is being referred as petitioner no.2.

Petitioners, who are stated to be Non-Resident Indian, have migrated to U.K. and it is during the period, the petitioners were in U.K., instant FIR was registered against them at the instance of respondent no.2-complainant namely Harneet Singh.

As per the FIR, complainant - Harneet Singh had purchased 7 acres of land from Avtar Singh son of Sohan Singh (petitioner no.1) and Sohan Singh son of Udhar Singh (petitioner no.2), residents of Vill. Samrari, Tehsil Phillaur, District Jalandhar @ Rs.1,48,50,000/- per acre and payment was made to them through cheque as well as draft in India and abroad. However, after payment of the earnest money, the petitioners-accused gave this land to some other persons, which led to registration of the FIR in question.

Mr. Kanwaljit Singh, learned senior counsel assisted by Mr. Gagandeep Singh, Advocate, appearing on behalf of the petitioners, has argued that sale deed for land measuring 2 acres and 19 marlas was executed on 24.4.2009 whereas the FIR in question was registered in the

year 2013. He has further argued that though the agreement to sell was for 7 acres of land, but since the complainant paid price for 2 acres and 19 marlas of land, sale deed was executed on 24.4.2009 for land measuring 2 acres and 19 marlas only. However, the petitioners are ready to execute the sale deed *qua* the remaining land on the same consideration amount provided the complainant pays the balance sale consideration. He has further submitted that in the aforesaid FIR, the police has already completed investigation, however, due to pendency of the FIR, the movement of the petitioners has been totally restricted. Sohan Singh, petitioner no.2, who is father of Avtar Singh, petitioner no.1, is stated to be about 74 years of age, is suffering from various ailments and was under treatment at UK. He was diagnosed with acute coronary syndrome and has undergone coronary artery bypass surgery as well as surgery for aortic valve replacement, for which, he requires periodical check ups from medical specialists on account of multiple diseases, however, due to pendency of present FIR, he is not able to get regular treatment from UK.

Learned counsel for the petitioners has referred to letter dated 30.3.2017 written by Dr. S. Kaur, MBBS, DPB, 118, Warley Road, Oldbury, West Midlands B689SZ to support his contention that petitioner no.2-Sohan Singh is diagnosed with the aforementioned ailments. He is also a patient of Angina, hypertension and osteoarthritis. He has further argued that mere registration of FIR cannot restrict the movement of the petitioners. Moreover, the police has already investigated the matter and has not found any substance in the FIR and therefore, they are in the process of filing cancellation report.

He has further argued that a Special Investigation Team (SIT) was constituted in the matter under the supervision of Mr. Surinder Lamba, Assistant Inspector General of Police, NRI and Women Wing, Ludhiana, which has submitted its report to Inspector General of Police, NRI and Women Wing, Phase 7, SAS Nagar, Mohali, stating therein that in the earlier investigation conducted by the police, the petitioner - Avtar Singh son of Sohan Singh, Rachhpal Singh son of Chanan Singh, witness and Girdhari Lal son of Pritam Lal, power of attorney holder of petitioner - Avtar Singh, have not been joined. Thus, the allegations levelled against the petitioners were not proved and the matter was found to be civil in nature.

Mr. Gaurav Sharma, Advocate has put in appearance on behalf of respondent no.2-complainant and filed his *vakalatnama* in Court, which is taken on record.

Learned counsel for the respondent no.2-complainant has argued that the petitioners did not appear before the trial Court, therefore, they were declared as proclaimed offenders for so many years. In fact, the petitioners have played fraud of crores of rupees upon the complainant and in case they are allowed to go abroad, it will cause a great prejudice to the complainant, as there is every possibility that they will not return back to India and will flee from the jurisdiction of this Court. He has further argued that in case petitioner no.2 – Sohan Singh is suffering from any ailment, there are sufficient medical facilities available in India and the petitioner can get medical treatment within India itself. The communication dated 30.3.2017 received from Dr. S. Kaur, MBBS, DPB, 118, Warley Road,

Oldbury, West Midlands B689SZ is not sufficient to grant permission to the petitioners to go abroad for treatment. He has further argued that the petitioners are not entitled for any discretionary relief, as they have duped huge amount of respondent no.2-complainant. There is apprehension that the petitioners may not return back to India. The very object of the petitioners is to abscond from the jurisdiction of Indian Courts, which shall hamper the trial. He has relied upon judgment of Delhi High Court in the case of *N.C. Jain @ Chandraswami v. C.B.I. 1998(3) AICLR 372* to contend that the petitioners can be allowed to go abroad only for valid and justifiable reason that treatment for such like ailments, which petitioner no.2 is suffering, is not available in India.

On the other hand, learned State counsel, on instructions from Mr. Surinder Lamba, Assistant Inspector General of Police, NRI and Women Wing, Ludhiana, who is present in Court, has submitted that the matter has been thoroughly examined by AIG, NRI and Women Wing, Ludhiana and inquiry report dated 9.5.2017 has been submitted to Inspector General of Police, NRI and Women Wing, Mohali. As per the report, the complainant has made the complaint by concealing material facts. During earlier investigation, the petitioner Avtar Singh son of Sohan Singh, Rachhpal Singh son of Chanan Singh, witness and Girdhari Lal son of Pritam Lal, power of attorney holder of petitioner Avtar Singh, were not joined. Besides this, the persons in whose name registry was executed were not joined in the investigation. Therefore, as per the inquiry report, the allegations levelled by the complainant against the petitioner no.1 - Avtar

Singh and petitioner no.2 - Sohan Singh are not proved, as the matter is civil in nature.

I have heard learned counsel for the parties and perused the record available in the case file.

The agreement to sell, in question, is stated to have been executed between the petitioners and the complainant on 7.11.2008 for purchase of 7 acres of land and the FIR in question was registered on 8.3.2013 i.e. after an inordinate delay of about 4 years and 4 months. On the previous date of hearing i.e. 8.8.2017, learned State counsel, on instructions from Inspector Satnam Singh, had submitted that a Special Investigation Team (SIT) headed by Mr. Surinder Lamba, Assistant Inspector General of Police, NRI and Women Wing, Ludhiana has been constituted in the matter. Accordingly, Mr. Surinder Lamba, Assistant Inspector General of Police was directed to remain present in Court.

Today, Mr. Surinder Lamba, Assistant Inspector General of Police, NRI and Women Wing, Ludhiana is present in Court. He has submitted that the police has already completed the investigation and they are in the process of filing cancellation report and thus, as on today, the petitioners are not required in the instant case.

The plea of learned counsel for the petitioners that Sohan Singh, petitioner no.2, is aged about 74 years and has been diagnosed with acute coronary syndrome and has undergone coronary artery bypass surgery as well as surgery for aortic valve replacement, apart from being a patient of Angina, hypertension and osteoarthritis, cannot be ignored casually. Old age itself is an ailment even if due care is taken. Therefore,

mere pendency of FIR is no ground to decline the prayer of the petitioners, especially when after thorough inquiry, the police is in the process of filing cancellation report. The judgment of Delhi High Court in the case of **N.C. Jain @ Chandraswami v. C.B.I.** (supra), relied by learned counsel for the respondent no.2-complainant is not applicable in the facts and circumstances of the present case, as in that case, the matter was under trial, whereas in the case in hand, after investigation, the police is in the process of filing cancellation report.

Hon'ble the Supreme 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 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.”

Therefore, taking into consideration the report submitted by Mr. Surinder Lamba, Assistant Inspector General of Police, NRI and Women Wing, Ludhiana, wherein the police is already in the process of filing cancellation report, this Court finds that the petitioners deserve to be permitted to go abroad, enabling petitioner no.2 Sohan Singh to get treatment. Petitioner no.1 – Avtar Singh is son of petitioner no.2 – Sohan Singh, therefore, a son is also expected to take care of his father at such an old age. However, such permission may be granted subject to certain conditions.

In view of the observations made hereinabove, the trial Court/Illaq Magistrate/Duty Magistrate is directed to pass an appropriate order to return the passport of the petitioners and permit them to go abroad, for which, the petitioners shall execute personal bonds in a sum of Rs.50 lacs each with an undertaking that after completion of medical treatment of Sohan Singh, petitioner no.2, both the petitioners shall report back on or before 30.11.2017 and shall surrender their passports before the Magistrate. 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.

Accordingly, the present petitions are allowed and the impugned orders dated 3.7.2017 passed by Additional Chief Judicial Magistrate, Kapurthala are set aside.

A photocopy of this order be placed on the file of other connected case i.e. CRM-M-25952-2017.

August 10, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No