

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

**CRM No. M-22020 OF 2018 (O&M)
DATE OF DECISION: 01.06.2018.**

Sukhpal Singh Khaira

...Petitioner.

Versus

State of Punjab

...Respondent.

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Mehtab Singh Khaira, Advocate,
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has impugned the order dated 15.05.2018 (Annexure P-1) passed by the Additional Sessions Judge, Fazilka, whereby his application for release of his passport and permission to travel abroad has been declined.

Learned counsel for the petitioner contends that petitioner is second time elected MLA and is currently Leader of Opposition in Punjab Legislative Assembly. He intends to go to U.S.A. and Canada, as he has been invited by a section of NRIs. He has been summoned by the trial Court on an application by the prosecution under Section 319 Cr.P.C., in FIR No.35 dated 05.03.2015 under Sections 29/30/27-A/23 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the NDPS Act") registered at Police Station Sadar Jalalabad.

Learned counsel further contends that neither the petitioner was named in the FIR, nor challaned by the police. It was only after conclusion of the trial, that he was summoned under Section 319 Cr.P.C. by the trial Court by the order dated 31.10.2017. This order was challenged by the petitioner by preferring CRR No.4070 of 2017 which was dismissed by this Court on 17.11.2017. By an interim order of this Court dated 06.11.2017, the petitioner was directed to deposit his passport in the trial Court. The petitioner challenged the order dated 17.11.2017, by preferring Special Leave to Appeal (Crl.) No.9063/2017, wherein the Supreme Court, by the order dated 01.12.2017, stayed further proceedings before the trial Court. The matter is now listed for final disposal on 11.07.2018. The petitioner has never attempted to flee from justice and is a law abiding citizen.

On the other hand, learned State counsel contends that the petitioner is involved in a serious case under the NDPS Act and there is every likelihood that he shall abscond if he is granted permission to go abroad. The co-accused of the petitioner have been convicted by the trial Court by the judgment dated 31.10.2017 and, therefore, the petitioner should not be granted permission to travel abroad.

Heard.

It is well recognized that every citizen of this country has a fundamental right to possess passport and travel abroad, which is guaranteed and protected under Article 21 of the

Constitution of India. It is stipulated in Article 21 that no person shall be deprived of his life or personal liberty except according to procedure established by law.

It has been held by the Supreme Court in "**Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi**" 1967 AIR 1836" and "**Maneka Gandhi v. Union of India**" 1978 (1) SCC 248, that the personal liberty enshrined in Article 21 has, within its ambit, the right to travel abroad.

It is, thus, manifest that any restriction on this right could only be in terms of procedure established under the law. The grounds for denial of the passport are stipulated under Section 6 of the Passport Act. There are no such proceedings against the petitioner.

It is also true that the Court may impose restrictions and prevent a person from going abroad, if he is involved in a serious offence and there is reasonable apprehension of his fleeing from justice.

The contention of learned State counsel that the petitioner is involved in an offence under the NDPS Act and is likely to abscond, appears to be unfounded for the reason that the petitioner was neither named as an accused in the FIR, nor was he challaned by the police. It was only at the conclusion of trial that he had been summoned under Section 319 Cr.P.C. The Supreme Court has stayed the proceedings in the trial Court.

The petitioner is a Leader of Opposition in the Punjab Vidhan Sabha and intends to visit U.S.A. and Canada which has a significant presence of Punjabi diaspora. I do not find any impediment in the release of his passport to enable him to travel abroad.

Consequently, the petition is allowed and the impugned order dated 15.05.2018 (Annexure P-1) is set-aside. The petitioner is permitted to go to U.S.A. and Canada. His passport shall be released. He shall return to India by 10.07.2018. On his return, he shall redeposit his passport in the trial Court.

(ANUPINDER SINGH GREWAL)
JUDGE

JUNE 01, 2018

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| 1. | Whether speaking/reasoned : | YES/NO |
| 2. | Whether reportable : | YES/NO |