

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

280

CRM-M-13622-2019 (O & M)
Date of Decision:01.05.2019

TEJ PARTAP SINGH GREWAL

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

MANOJ BAJAJ, J.(ORAL)

Petitioner has challenged the order dated 16.03.2019 (Annexure P-3), whereby his application for seeking permission to go abroad stands dismissed by the learned trial Court on the ground that the further investigation in case FIR No.39 dated 10.04.2007 under Sections 406 and 120-B of Indian Penal Code at Police Station Dehlon, Ludhiana, is pending.

While issuing notice of motion, the following order was passed on 26.03.2019:-

“Learned Senior counsel appearing on behalf of the petitioner contends that after investigation in case FIR No.39 dated 10.04.2007 registered under Sections 406 and 120-B of Indian Penal Code at Police Station Dehlon, Ludhiana, a cancellation report was submitted.

Attention of the Court is drawn to the order dated 14.06.2018 wherein it is recorded that the complainant, namely, Harmeet Singh Grewal is not served as he has shifted abroad permanently. It is apparent from the order that the Court has not proceeded with the cancellation report only for want of service of the complainant.

It is further pointed out that, thereafter, the Court had ordered further investigation though the complainant was not served. It is contended that the order dated 16.03.2019 (Annexure P-3), refusing the permission to the petitioner (accused) to go abroad is extremely harsh particularly when the complainant is not appearing before the Court.

Notice of motion for 22.04.2019.”

In response to this, Mr. Kirat Singh Sidhu, DAG, Punjab has filed reply by way of affidavit of Gurbans Singh Bains, PPS, DSP Dakha, District Ludhiana (Rural) on behalf of the respondent, wherein it is mentioned that after investigation in the said FIR, cancellation report was prepared on 29.09.2007 and the same was presented in the Court on 19.02.2015. However, the complainant had not appeared before the Court as he had left India, therefore, the same was returned to the police with the direction to produce the complainant. As the complainant had gone to Tanzania, therefore, he could not be produced before the Court. Thereafter, the police after further investigation again submitted cancellation report on 03.08.2017 before the Judicial Magistrate Ist Class, Ludhiana and the same

was returned being incomplete. The cancellation report was reiterated on 15.02.2019 but the same was returned for further investigation to the police.

Learned senior counsel for the petitioner contends that the FIR stands investigated on number of occasions and the conclusion drawn by the Investigating Officer is same and simply because the complainant is not putting his appearance pursuant to the submission of the cancellation report, the Court is unjustified in keeping it pending.

On the other hand, learned counsel for the State submits that since the investigation is pending and, therefore, it will not be safe to allow the petitioner to go abroad. However, it is not disputed that previously cancellation report has been prepared and reiterated subsequently.

After hearing the learned counsel for the parties, this Court is of the opinion that there is no conflict as far as the facts are concerned, as it is not disputed that the cancellation report was submitted on a number of occasions before the trial Court and the trial Court everytime insisted for the presence of the complainant, who is admittedly not in India and has sent it for further investigation without assigning any reasons much less justifiable. The pendency of the case has curtailed the rights of the petitioner, who is not being allowed to visit abroad. Merely, because a person is an accused in a criminal case, his right to life is not suspended absolutely particularly, his right to travel abroad, though subject to conditions, as guaranteed under Article 21 of the Constitution of India.

A perusal of the application reveals that the daughter of the petitioner is residing in Calgary, Canada and the petitioner intends to visit Calgary, Canada with his daughter and grand children for a period of six months. Also it is not the case of the State that the petitioner ever refused to

join the investigation or interfered with the same. No convincing ground is made out by the State to deny the said permission.

In the judgment passed by the Hon'ble Supreme Court in **Satish Chandra Verma vs. Union of India and others in Civil Appeal No.3802 of 2019** decided on 09.04.2019, it has been held in Para 5 as under:-

*“5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See: **Mrs. Maneka Gandhi v. Union of India and another (1978) 1 SCC 248**). In the said judgment, there is a reference to the words of Justice Douglas in **Kent v. Dulles 357 US 116** which are as follows:*

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

At this stage, learned senior counsel has prayed that permission be granted to the petitioner to visit abroad for a period of 6 months, at present, and the petitioner shall furnish the requisite bail bonds etc. to the satisfaction of the Magistrate concerned.

In view of the above, particularly when the complainant is not

showing any interest in this FIR and has virtually abandoned it, this Court

finds no reason to disallow the petitioner to go abroad. Resultantly, the impugned order is set aside and the petitioner is permitted to go abroad for 6 months. It is made clear that the petitioner shall furnish the requisite bonds/surety to the satisfaction of the Magistrate concerned.

Petition is allowed.

01.05.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No