

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-17819 of 2019

Date of Decision: 28.05.2019

Suraj Bhan Dahiya & another

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Anurag Chopra, Advocate
for the petitioner(s).

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for quashing of order dated 05.04.2019 passed by Judicial Magistrate Ist Class, Panchkula, whereby the application filed by the petitioners seeking permission to travel abroad has been dismissed.

Briefly stated, FIR No.73 dated 25.5.2015 under Sections 323/406/498-A IPC was registered at Police Station Raipur Rani, District Ambala at the behest of the complainant-Manisha Lamba. The petitioners are in-laws of the complainant. Husband of the complainant namely Prateek Dahiya is stated to be residing in Australia whereas the complainant is residing in USA.

Learned counsel for the petitioners has argued that the petitioners are already on bail and they intend to go abroad i.e. U.K., USA and Australia. They have valid visas to visit UK and USA, however, they will apply for visa to visit Australia, where their son is residing, which is likely to be granted to them. On account of pendency of aforesaid FIR, the petitioners are not able to go abroad and their movement is restricted. He has argued that though challan in the case has been presented, but the petitioners have approached this Court by filing CRM-M-3160-2016 seeking quashing of the FIR in question, which is listed for hearing on 13.09.2019 and the proceedings in the case have been stayed. Efforts were even made to settle the dispute through mediation proceedings before this Court, but the matter could not be resolved. Since the complainant is in USA, she had not come forward to attend the mediation proceedings, which shows that the complainant intends to prolong the proceedings.

Learned counsel for the petitioners has further argued that marriage between Prateek Dahiya (son of the petitioners) and Manisha Lamba, complainant was solemnised on 15.07.2013 and the parties who had hardly stayed together for about 4-5 months, are living separately since December, 2013. He prays for grant of permission to the petitioners to travel abroad for a period of three months.

Learned State counsel, on instructions from the ASI Ram Bhaj, has argued that the petitioners are parents-in-law of the complainant. Husband of the complainant is already in Australia, who has not come forward to join investigation and accordingly, PO proceedings against him are pending consideration before the trial Court. In the event of grant of

such like permission to the petitioners to go abroad, there is every possibility that the petitioners may not return back to India, jeopardizing the very proceedings before the Court below.

I have heard learned counsel for the parties.

The solitary reason for the Magistrate to decline permission to the petitioners to go abroad is that their son is already absconding and is facing PO proceedings and he could not be traced despite repeated efforts made by the police. The petitioners intend to go abroad in the months of April and June, 2019, however, the date and duration of their visit was not clearly specified and resultantly, the permission to go abroad to the petitioners was declined.

Petitioners no.1 and 2 are parents-in-law of the complainant and are in their early 70s and late 60s, respectively. Merely because an FIR has been registered against them under Sections 323/406/498-A IPC and this dispute is matrimonial in nature, this Court finds that their movement cannot be completely curtailed. Mere registration of an FIR does not *ipso facto* give any right to the prosecution to withhold the permission to the petitioners to go abroad. Virtually, it is a case of break down of marriage, as the complainant and her husband, who are otherwise living abroad, could not pull well and immediately after their marriage, they are living separately. Permission to go abroad during trial should not invariably be declined unless there are reasons to believe that such permission is being sought for oblique considerations or the petitioners would never come back to India.

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.

In view of the averments made in this petition, the stand taken by the State and the law laid down by Hon'ble the Apex Court, this Court finds that the petitioners deserve to be permitted to go abroad, as an interim relief, however, subject to certain conditions.

Without observing anything on the merits of the case, lest it may prejudice the case of the parties, but confining to the prayer of the petitioners to grant them permission to go abroad, the present petition is allowed, order dated 05.04.2019 passed by Judicial Magistrate Ist Class, Panchkula is set aside and the trial Court/Illaq Magistrate is directed to pass a fresh appropriate order permitting the petitioners to go abroad between 20.06.2019 to 20.09.2019, for which, the petitioners shall execute their personal bonds and furnish bank guarantee, as may be directed by the trial Court, with a further undertaking that the petitioners would report back to India on or before 20.09.2019 and shall report back to the trial Court on 23.09.2019. The trial Court/Illaq Magistrate may further impose any other

conditions as it may deem fit and proper in the facts and circumstances of the case.

May 28, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No