

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

**CRM No. 9652 of 2019 in/and
CRR No. 2642 of 2017 (O&M)
Date of Decision: 29.10.2019**

Manpreet Kaur and another

..... Applicants-petitioners

Versus

State of Punjab

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI**

Present: Mr. R.S. Dhaliwal, Advocate for
Mr. Rajvinder Singh Bains, Advocate
for the applicants-petitioners.

Mr. Pankaj Gupta, Additional Advocate General, Punjab
for the respondent/State.

Mr. Sudhir Sharma, Advocate for
Mr. Ram Krishan Rana, Advocate
for the complainant.

JASWANT SINGH, J.

CRM No. 9652 of 2019

Present application under Section 482 of Cr.P.C. moved by the applicants-petitioners is for segregation of present Revision Petition from Criminal Appeal bearing CRM-A No. 1602-MA of 2016 and to hear the same as the present revision is against the order dated 06.05.2017 passed by learned Additional Sessions Judge, Patiala, whereby the application of the petitioners for release of their passport has been declined on the ground that the appeal against the acquittal of the petitioners are pending before this Court.

Notice of the application stands issued vide order dated

25.03.2019.

At the time of hearing, counsel for the respondents have no objection if the present revision petition is segregated from the afore-numbered Criminal Appeal and further, counsel for the parties have no objection if the present revision petition is taken up today itself for hearing.

In view of above, present **application** is **allowed**. It is ordered that the present Revision Petition be segregated from the afore-numbered Criminal Appeal and the same is taken up today itself for hearing.

MAIN CASE

1. The two (02) petitioners, namely, **Manpreet Kaur D/o Udey Singh** and **Manjit Kaur wife of Udey Singh** (petitioner Nos. 1 & 2, respectively) have filed the present Criminal Revision Petition to set aside the order dated 06.05.2017 passed by learned Additional Sessions Judge, Patiala, vide which their prayer for releasing of their passports has been declined.

2. The impugned order dated 06.05.2017 passed by Additional Sessions Judge is reproduced as under for facility:-

“ Requisite report from SHO PS Civil Lines, Patiala received that both passports in question were not taken into police custody. As per direction given by this court, Ahlmad has perused the trial file titled as State v. Ravinder Singh and others, bearing Session Case no.01 of 04.01.2008 (SC/12601/2013) and submitted that the passport of applicants bearings no.A8548511 and E2839266 were taken into police possession vide memo Ex.PW12/D. He further submitted that the appeals CRA-D-650-DB-2016 and CRA-D-686-DB-2016 against the judgment passed by this court are pending before Hon'ble Punjab and Haryana High Court.

The passports in question were impounded by police during investigation and thus, these passports were case

property. Since the appeals are pending before Hon'ble High Court, this court has no jurisdiction to order the release of case property at this stage. Consequently, the application is declined. Papers be tagged with trial file and be consigned to the record room. ”

3. The case of the petitioners is that their passports were taken into police custody by police vide memo Ex.PW12/D in case titled as ***State Vs. Ravinder Singh and others***, bearing Session Case No. 01 of 04.01.2008 in F.I.R. No.209 dated 21.09.2007 registered under ***Sections 302, 307, 148 and 149 Indian Penal Code (IPC) and Sections 25 and 27 of Arms Act*** of Police Station Civil Lines, Patiala. The petitioners have been acquitted in the Sessions trial vide judgment dated 02.07.2016. However, their prayer for releasing of their passports has been declined by the Trial Court only on the ground that the appeal against the judgment dated 02.07.2016 is pending before this Court.

The State has strongly objected the release of the passports of the petitioners merely on the ground that the appeal (***CRM-A No. 1602-MA of 2016***) of the State/Complainant against the impugned judgment of acquittal *qua* the two (02) petitioners dated 02.07.2016 is pending and in case the passports of the petitioners are released, they may go abroad and their chances to come back to India would be very bleak.

4. It is relevant to state that as per Section 10 (3) of the Passports Act, 1967, (for short, the 'Act'), the Passport Authority may impound or cause to be impounded a Passport under certain circumstances. Relevant ***Section 10 (3) of the Act, 1967***, reads as follows:

“ *The Passport Authority may impound or cause to be impounded or revoke a Passport or travel document:*

(a) if the Passport Authority is satisfied that the holder of the Passport or travel document is in wrongful possession thereof;

(b) if the Passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the Passport or travel document or any other person on his behalf;

[Provided that if the holder of such Passport obtains another Passport, the Passport Authority shall also impound or cause to be impounded or revoke such other Passport.]

(c) if the Passport Authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the Passport or travel document has, at any time after the issue of the Passport or travel document, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the Passport or travel document are pending before a Criminal Court in India;

(f) if any of the conditions of the Passport or travel document has been contravened;

(g) if the holder of the Passport or travel document has failed to comply with a notice under sub-section (1), requiring him to deliver up the same;

(h) if it is brought to the Notice of the Passport Authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the Passport or travel document has been issued by

a Court under any law for the time being in force or if an Order prohibiting the departure from India of the holder of the Passport or other travel document has been made by any such Court and the Passport Authority is satisfied that a warrant or summons has been so issued or an Order has been so made. "

A bare reading of the above referred provision of the Act, 1967, leaves no manner of doubt that only the Passport Authority under this Act has power to impound the passport and a Criminal Court and Police has no power to impound a passport.

5. Hon'ble Supreme Court has laid down in case ***Suresh Nanda v. C.B.I. (2008 Cri LJ 1599)*** that a Court cannot impound a passport. Impounding of a passport can only be done by the Passport Authority under Section 10(3) of the Passports Act, 1967. Para 15 of the judgment of the Apex Court in the above cited case reads thus :

" In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104, Criminal Procedure Code states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Criminal Procedure Code is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non-derogant". Hence, impounding of a passport cannot be done by the Court under Section 104, Criminal Procedure Code though it can impound any other document or thing."

6. Now, in the present case, we are of the view that impugned order passed by the Trial Court is illegal as the trial Court has failed to exercise its jurisdiction at the time of declining the prayer of the petitioners for releasing of their passports.

The apprehension of the State that the petitioners may not return to India, is just an illusion or delusion. Moreso, there is verdict of acquittal of the Trial Court in favour of the petitioners and, therefore, on this count also their passports cannot be retained or impounded by the Court or by the police also. However, to allay the fears of the prosecution that the petitioners may not return back to India, in case their passports are released, certain conditions are hereby imposed which are as under:-

- “
- (1) That the petitioners shall submit a certified copy of their passports with the Court below at the time of releasing of passports by the Court below;**
 - (2) That the petitioners shall always seek prior permission of the Court below in case they will travel abroad;**
 - (3) That the petitioners shall inform to Court below immediately after their return from abroad and in case, they would travel on the basis of their passport;**
 - (4) At the time of moving of application for seeking prior permission of the Court below to travel abroad, the petitioners shall also submit the details of their moveable and immovable property with the undertaking that in case they will not return to India, their property may be dealt in accordance with law.”**

The above referred conditions will remain in force till the decision of appeal pending against the petitioners before this Court.

7. We have also noticed that the Trial Court has not directed the petitioners to furnish their bail bonds as per requirement of *Section 437-A of Criminal Procedure Code, 1973*. Therefore, we hereby **direct** the petitioners to furnish their bail bonds before the Court below, as per requirement of Section 437-A of Criminal Procedure Code, 1973.

We **also direct** to all the Criminal Courts in State of *Punjab, Haryana and U.T. Chandigarh* to make the **strict compliance** of ***Section 437-A of Criminal Procedure Code, 1973***. The Registrar General is directed to circulate the copy of judgment in this regard to all the Sessions Judges of Punjab, Haryana and U.T., Chandigarh for onward transmission to the Courts concerned for the strict compliance.

8. In the result, present **Criminal Revision Petition** is **allowed** and the order passed by the Trial Court is hereby set aside. Accordingly, we **direct** the trial Court to return the passport of the petitioners in accordance with law.

A copy of this order be also sent to the trial Court concerned for making compliance forthwith *qua* release of passports also.

(JASWANT SINGH)
JUDGE

October 29, 2019
'dk kamra'

(GIRISH AGNIHOTRI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No