

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

CRM-M No.55170 of 2018

Date of Decision: 22.02.2019

Ryan Augustine Pinto

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Cheema, Sr. Advocate
with Mr. Arshdeep S. Cheema, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate
for the respondent-CBI.

Mr. Anupam Singla, Advocate
and Mr. Sushil K. Tekriwal, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioner earlier filed **CRM No.M-35002 of 2017** in case FIR No.250 dated 08.09.2017 registered for the offences punishable under Sections 302 IPC, Section 25 of the Arms Act, Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2005 and Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (which was added later on) at Police Station Bhondsi. The investigation of the said case was transferred to Central Bureau of Investigation (CBI). The aforesaid FIR was re-registered bearing No.RC 8(S)/2017/SCIII/New Delhi on 22.09.2017. Vide order dated 07.10.2017, the petitioner was released on interim bail on his furnishing bail bonds to the satisfaction of the

Investigating Agency subject to terms and conditions as envisaged under Section 438(2)(i) to (iv) Cr.P.C. Thereafter, the case came up for hearing on 21.11.2017 and the following order was passed :-

“ As admitted by learned counsel representing CBI, petitioners have not ever been called for joining the investigation and CBI has arrested a student of the school as main accused for murder of Pradyumn and is concentrating on his role in committing the crime.”

Thereafter, the interim order of bail was made absolute by this Court vide order dated 21.11.2017 with the following conditions :-

- “i. That the petitioners shall make themselves available for interrogation by the investigating agency as and when required;*
- ii. That the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to investigating agency.*
- iii. That the petitioners shall not leave India without the prior permission of the Court.*
- iv. That the petitioners will seek regular bail on the presentation of challan in Court.”*

The complainant i.e father of the deceased filed an appeal before the Hon'ble Apex Court to challenge order dated 21.11.2017 passed by this Court but the same was dismissed vide order dated 11.12.2017 and the order passed by this Court on 21.11.2017 was upheld. Thereafter, the petitioner was issued a notice by the respondent to appear before the Investigating Agency. Petitioner appeared as and when required. He filed a petition under Section 482 Cr.P.C before this Court seeking permission to travel abroad i.e U.S.A from 19.01.2018 to 09.02.2018. Having no objection

from CBI, the petitioner was allowed to travel abroad on 18.01.2018 subject to following conditions :-

“ This court feels that the necessary security in the aforesaid terms be furnished to the investigating officer or any official deem fit by the investigating agency. On doing so, petitioner shall be permitted to travel abroad from 19.01.2018 to 09.02.2018. On returning, he shall report to the investigating officer and join investigation as and when called for. Needless to observe that investigating officer shall be at liberty to release the surety thereafter subject to imposition of such terms and conditions as envisaged by the bail order.”

The petitioner, in compliance of order dated 18.01.2018, deposited the surety. Thereafter, the final report under Section 173 Cr.P.C was filed before this Court. The petitioner sought permission to visit different countries during the period 2015 to 2017. Thereafter, he approached this Court by way of filing **CRM No.42602 of 2018** in **CRM-M No.35002 of 2017** for modification of order granting bail to the extent of removing the restriction imposed on his travel. Said petition was dismissed as withdrawn with liberty to avail other legal remedies including filing of separate petition. Thereafter, the petitioner filed the present petition for modification of terms and conditions incorporated in the order granting bail and especially the condition of not leaving country without prior permission of the Court.

Learned senior counsel for the petitioner submits that the imposition of condition of seeking prior permission to travel abroad affects the personal liberty of the petitioner as guaranteed under the Constitution of India. During investigation, no material has been collected by the Investigating Agency against the petitioner to show his involvement with

the alleged commission of offence. Learned senior counsel further submits that in spite of having sufficient long time, the Investigating Agency has not collected any incriminating material against the petitioner. He also submits that the charge sheet was filed in the month of February, 2018 but no specific averment has been made with regard to role of the petitioner. At the last, it has been submitted that further investigation in the case has been kept open under Section 173(8) Cr.P.C and the result of further investigation is to be submitted to the Court in due course of time. Learned senior counsel also submits that the petitioner has been summoned as a witness and not as an accused. No substantial evidence has been collected for his involvement in the commission of offence. Learned senior counsel further submits that the petitioner has to approach the Court repeatedly for seeking permission to travel abroad, which is not only the wastage of time of the Court but the Investigating Agency exercises its discretion to oppose such permission. Learned counsel also submits that the petitioner is a frequent visitor to foreign countries and there is no progress in the investigation. During past, the petitioner has neither misused the concession of permission sought for travelling abroad nor likely to run away from the process of law. The condition of seeking prior permission from the Court to travel abroad is unnecessary and unreasonable restriction resulting into the wastage of precious time of the Court as well as to file a petition frequently by the petitioner.

Learned senior counsel for the petitioner has relied upon the judgments in cases ***Capt. Anila Bhatia vs State of Haryana (Criminal Misc. No.M-42638 of 2018, decided on 09.10.2018)***, ***Manmohan Singh vs CBI 2004(77) DRJ 341, Anil Rai vs CBI 2008(25) RCR (Crl.) 370, Bina***

K. Ramani vs State (Crl. M.C. No.3605 of 2009) decided on 05.02.2010, G. Vetrivel Sami @ Swami v. CBI (Crl. M.C. No.83 of 2012) decided on 20.03.2012, order dated 10.09.2018 passed in Puneet Miglani vs State of Punjab and another (CRM-M No.39488 of 2018), Rajesh Kumar vs State of Gujarat 2018 SCC Online Guj. 1273, Bandi Abdul Gafur Ahmedbhai vs State of Gujarat 2016 SCC Online Guj. 6336, Jayvijaysinh Kishorsinh Chauhan vs State of Gujarat 2016 SCC Online Guj 6337, Jitendra Hariprasad Gautam vs State of Gujarat and another 2016 SCC Online Guj 9462, Millind Ashokbhai Shah & 2 vs State of Gujarat 2016 SCC Online Guj 9024, Mohammed Kazim Shingati vs H.B. Shrimali-Customs Superintendent (Alu) & anr. 2016 SCC Online Guj 7883 as well as Ajit Natwarlal Parmar vs State of Gujarat 2013 SCC Online Guj 4948, in support of his arguments.

Mr. Sumeet Goel, Advocate for the respondent-CBI has opposed the submissions made by learned counsel for the petitioner on the ground that no un-reasonable condition has been mentioned in the order of bail, which is detrimental to the interest of the petitioner. Learned counsel also submits that there is a progress in the investigation and the same is likely to be concluded. The conditions have been incorporated in the order of bail in view of provisions of Section 437(2) of the Cr.P.C. He also submits that in case, the blanket permission is granted to the petitioner, he may run away from the proceedings of the case.

Heard the arguments of learned counsel for the parties and have also considered the documents available on the file including the order of bail.

The main grievance of the petitioner in the present petition is

for modification of condition of taking prior permission of the Court to travel abroad. Section 437 of the Cr.P.C is reproduced as under :-

437. When bail may be taken in case of non-bailable offence.-(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years];

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court;

Provided also that no person shall, if the offence alleged to

have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the public prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under

sub-section (1) or sub- section (2), shall record in writing his or its reasons or special seasons for so doing.

(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

437A. Bail to require accused to appear before next appellate Court. - (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

Section 438 of the Cr.P.C is also relevant, which is reproduced as under :-

“438. Direction for grant of bail to person apprehending arrest. -

(1) Where any person has reason to believe that he may be

arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a

direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

Section 438(2) of the Cr.P.C provides conditions including condition (iii) i.e that the person shall not leave India without the previous permission of the Court.

The petitioner is aggrieved by that condition that every time such prior permission is not required as he is to travel abroad frequently. He has never misused this concession as earlier he has visited number of countries. It has also been submitted that such condition is detrimental to the freedom of the petitioner.

Section 437 of the Code deals with power of the Court to grant bail in non-bailable offences. Under Section 437(3) of the Code, while releasing a person accused, the Court shall impose certain conditions, which are as under :-

“(a) that such person shall attend in accordance with the conditions of the bond executed under this chapter,

(b) That such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

and may also impose, in the interest of justice, such other conditions as it considers necessary.” Even in the case of non bailable offences other than falling under sub sec.(3) of Section 437, the court or Magistrate may in its/his discretion impose conditions while granting bail to the person accused or suspected of commission of such offence.”

Sub sec.(3) of Section 437 of the Code requires the Magistrate or Court to impose conditions while granting bail to the petitioner. While granting bail, the Court has to ensure that the accused or person suspected of commission of the offence is available for investigation, enquiry and trial. To ensure that, the Court may impose certain conditions on such person while releasing him/her on bail. In non bailable offences falling outside the scope of sub sec.(3) of Sec. 437 of the Code, the power to

impose condition is discretionary.

The expression “personal liberty” is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a person. The Supreme Court, in **Satwant Singh v. Asst. Passport Officer [(1967) 3 SCR 525]** held that “personal liberty” guaranteed under Article 21 CrI. M.C. No.1734 of 2011 encompassed a right of locomotion, of the right to travel abroad. Every citizen living in India has a fundamental right to travel, even outside India. Refusal by the Government to issue a passport without a valid law prescribing reasonable restrictions was held to be an arbitrary exercise of the executive power infringing the equality clause of the Constitution. After the decision in Satwant Singh’s case the Parliament passed the Passport Act, 1967 regulating conditions for the grant and refusal of passport and providing grounds for impounding passport. Even after passing of the said Act, in **Maneka Gandhi v. Union of India [(1978) 1 SCC 248]** the Supreme Court held that the right to travel abroad is not only encompassed in the right to liberty under Article 21 of the Constitution, but that right could only be denied if the procedural law which governed its exercise is fair.

Even after enactment of the Act, in view of Article 21 of the Constitution as explained in **Maneka Gandhi’s case (supra)** the right to travel abroad is encompassed in the right to personal liberty which cannot be deprived except in accordance with the procedure established by the law. The right to travel abroad can be deprived by following procedure established by the law. Sec. 437(3) of the Code requires and enables the criminal court while releasing a person accused or suspected of commission of a non bailable offence by imposing a reasonable condition that such

person shall attend in accordance with the conditions of the bond executed under chapter XXXIII of the Code. Even in the matter of non bailable offences not falling within sub sec.(3) of Sec. 437 of the Code, the Magistrate or court has the discretionary power to impose condition while granting bail. The person to whom bail is granted has to execute a bond in Form No.45 given in the second schedule of the Code. The relevant provision of the bond in Form No.45 states.” and required to give security for any attendance before such officer or court on condition that I shall attend such officer or court on every day on which any investigation or trial is held with regard to such Crl. M.C. No.1734 of 2011 charge, and in case of my making default therein.....”

The power granted by the Code under Sec. 437 of the Code to impose certain conditions including restriction on movement while granting bail in non bailable offence can be taken as procedure established by law as stated in Article 21 of the Constitution. In that view, with great respect I disagree with the view expressed in Pushpal Swarnkar's case.

The criminal courts have to take extreme care in imposing such condition. It cannot mechanically, and in every case where an accused has a passport impose a condition for its surrender. Law presumes an accused to be innocent till he is declared guilty. As a presumably innocent person he is entitled to all the fundamental rights guaranteed to him under the Constitution. At the same time, interest of the society has also to be protected. The court has to strike a balance between personal liberty of the accused guaranteed under Article 21 of the Constitution, investigation rights of the police. The criminal court has to consider possibility of the accused if released on bail, fleeing justice and thereby thwarting the course of justice

which affects the majesty of the law, as also the individual rights of the accused. The court has to consider antecedents of the person accused or suspected of commission of the offence, nature of the offence he is said to have committed, necessity for his presence for investigation, duration of investigation and such other relevant factors. The court has to decide whether notwithstanding the personal liberty of the accused, interest of justice required that his right of movement should be restricted during the pendency of the case by directing him to surrender his passport. If necessary, it is open to the criminal court to direct the accused to execute bond in case he has to go abroad for any purpose, for appropriate amount with sureties undertaking to appear before the Investigating Officer or court as the case may be as and when required to do so. These are exhaustive as in some of the matters, it is to be borne in mind by the court while deciding whether there should be a condition to surrender the passport or when there is a request to release the passport already surrendered in court.

Same issue was there before Delhi High Court in case ***K. Ramani vs State 2014(10) RCR (Criminal) 1468*** as well as judgment of Gujarat High Court in case ***Kenal Vrajmohan Shah vs Department of Revenue Intelligence 2016(341) ELT 37***.

In said two judgments, the condition of surrendering passport and obtaining permission from the competent Court was dispensed with with a direction to the petitioner to furnish an undertaking in writing to the Registrar of the Court to make herself available during the course of investigation or the trial as and when required apart from furnishing the details of travel to the Investigating Officer, including the place where such person was to stay and the countries proposes to visit and the date of

departure and of return. Such condition was ordered to be incorporated as a condition of bail till the charge sheet was filed and after filing of charge sheet, the trial of the case was ordered not to be adjourned or deferred on the ground of travelling abroad.

In the present case as submitted by learned counsel for the petitioner, the petitioner is a frequent visitor to foreign countries as in the past, he had to participated in certain conferences, seminars and to receive the prestigious award on behalf of his mother. The petitioner is stated to be involved in spreading and promoting the education business of Ryan Group. He is to travel abroad for his professional assignments as well as his contribution in various fields of education.

Accordingly, by considering the submissions and the reasons as mentioned above, the present petition is allowed and the condition of seeking prior permission before leaving to abroad is modified to the extent that the petitioner now onwards shall not be required to take permission of the Court to travel abroad. However, the petitioner is directed to furnish an undertaking in writing before the Investigating Agency that he will make himself available during course of investigation or trial as and when he is required apart from furnishing the details of his travel abroad to the Investigating Officer including the place where he is likely to stay and the countries he proposes to visit and the date of departure and of return. This condition will be deemed to have been incorporated as a condition of bail till the presentation of final report. Thereafter, the same undertaking be furnished to the trial Court. The trial Court would also ensure that the trial of the case shall not be adjourned or deferred on the ground that the petitioner is undertaking/going to travel abroad.

It is also made clear that the petitioner shall inform the Investigating Agency/trial Court a week in advance of his visit abroad. He is also directed to furnish the aforesaid undertaking on affidavit to the Investigating Agency/trial Court and also state on affidavit that he would not undertake a foreign visit on the effective dates of hearing before the trial Court i.e when the evidence in this case is being recorded. The petitioner is also directed to indicate the Airport from where, he would be boarding and de-boarding. He is also directed to furnish a surety bond amounting to ***Rs.one crore*** keeping in view the apprehension of CBI as pointed out in the arguments. ***A liberty is granted to the CBI/trial Court to get this order revoked in the event of petitioner fails to comply with this order at any point of time during investigation/trial.***

22.02.2019
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No