

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

**CRM-3166-2019 in/and
CRM-M-25229-2018
Date of decision: 12.03.2019**

Abhijat Paliwal

...Applicant/petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms.Tanu Bedi, Advocate, for the applicant/petitioner.

Ms.Vibha Tewari, AAG, Haryana
along with ASI-Virender Singh, PS Chandni Bagh, Panipat.

Mr.Rohit Chandel, Advocate, for
Mr.Saurabh Gautam, Advocate, for the complainant.

G.S.SANDHAWALIA, J. (Oral)

Petitioner seek grant of anticipatory bail in FIR No.1069 dated 14.11.2017, registered under Sections 403, 405, 409, 415, 418, 420, 463, 465, 471 and 120-B IPC at Chandni Bagh Police Station, District Panipat.

When the matter came up for hearing on the first date, i.e., on 06.06.2018, the following order was passed:

“Counsel *inter alia* contends that the petitioner Abhijat Paliwal in CrI. Misc. No. M-25229 of 2018 who is son of Ajay Paliwal, petitioner in CrI. Misc. No. M-25223 of 2018 had entered into a matrimonial alliance with the complainant on 10.05.2006. They were successful in running various businesses together but on account of matrimonial disharmony, separation had taken place on 22.12.2015. The first FIR No. 212 was lodged on 01.07.2017 (Annexure P-3)

under Sections 34, 406, 498-A, 506 IPC at Police Station, Gurugram. Allegations as such of misappropriation for the last 10 years of the crores of rupees from the business was also mentioned. The petitioner-husband had got interim anticipatory bail in the said FIR, which was confirmed on 31.07.2017 (Annexure P-13). The present FIR thereafter has been lodged on 14.11.2017 under Sections 403, 405, 409, 415, 418, 420, 463, 465, 471 and 120-B IPC at P.S. Chandni Bagh, District Panipat (Annexure P-1).

It is accordingly submitted that the second FIR as such is only an attempt to put further pressure upon the petitioner and his family members after the anticipatory bail had been granted in the earlier FIR. This aspect has not been kept in mind by the Additional Sessions Judge, Panipat while declining the bail application. It is accordingly contended that the dispute is absolutely financial and for the control of the business and matters are also pending before the National Company Law Tribunal. An Administrator has also been appointed, who is not less than a retired Supreme Court Judge. It is submitted that in such circumstances, it is only a cloak and the dagger attempt to put pressure to get financial benefits by resorting to criminal proceedings.

Notice of motion for 08.08.2018.

Mr. Rohit Khanna, Advocate accepts notice on behalf of the complainant.

In the meantime, it is directed that the petitioners shall join investigation and in the event of arrest of the petitioners, they shall be released on ad-interim bail by the Investigating Officer. The petitioners shall join investigation as and when required and shall comply with the conditions envisaged in Section 438(2) Cr.P.C.

Photocopy of the order be placed on the file of connected case.”

Thereafter, on 27.07.2018, an application bearing CRM-24892-2018 was filed by Abhijat Paliwal, the husband, seeking

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permission to travel abroad, i.e. United States and Spain for the period commencing from 30.07.2018 to 14.08.2018, for attending the business activities, which was allowed by the Coordinate Court and he was allowed to travel abroad, subject to various conditions.

On 08.08.2018, it was brought to the notice of the Court the terms of the family settlement had been signed by the parties and they were directed to appear before the Investigating Officer on 17.08.2018.

Thereafter, another application bearing CRM-31241-2018 was filed for permission to travel abroad, i.e., Japan and United States for a period of 3 weeks, which was allowed by the Coordinate Bench on 07.09.2018 for a period from 11.09.2018 to 03.10.2018, subject to various undertakings.

In the meantime, parties also participated on the talks of compromise.

For the third time, another application, bearing CRM-38501-2018 was filed seeking permission to travel abroad for 3 months w.e.f. 09.11.2018 to 09.02.2019, which was allowed on 02.11.2018, for a period of 10 days, from 13.11.2018 to 23.11.2018.

Parties had also been directed to appear before this Court on several dates and they had come present. Thereafter, application bearing CRM-3166-2019 had been filed for modification/substitution of the conditions imposed by this Court in the order dated 06.06.2018, whereby requirement was provided to move an application before each foreign travel and furnish the details of the itinerary, his address during his stay abroad, to the Investigating Officer, before leaving the country. Notice of

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the application was also issued by the Coordinate Bench, which also noticed on 07.02.2019 that a compromise is in progress and the dispute is only of certain terms and conditions which was likely to be sorted out.

On 20.02.2019, the matter was listed before this Court, after obtaining orders from the Hon'ble Chief Justice, since the order dated 06.06.2018, passed by this Court, was sought to be varied in CRM-3166-2019 and the parties were directed to come present on the next date of hearing, i.e., 28.02.2019, on which date, the following facts were noticed:

“Petitioner-Abhijat Paliwal along with the complainant-Asmita Dwivedi Paliwal are present in Court. The Court has interacted with both the parties. It transpires that the matter has been settled with the intervention of the counsels. It is on this account that the counsels pray for some more time, so that final settlement entered into between the parties, can be placed on record, on or before the next date of hearing.

In such circumstances, further proceedings are deferred for 07.03.2019.

Interim order to continue.

Photocopy of this order be placed on the record of the other connected case.”

Thereafter, on 07.03.2019, the settlement agreement entered into between the parties was also placed before this Court whereby it was noticed that the draft settlement/agreement has been entered, inadvertently. It had also been noticed that as per the settlement/agreement, a sum of Rs.4,16,00,000/- had also been received by the complainant and the amount due is Rs.2,24,00,000/-, which is to be paid at the time of filing of the Second Motion of the mutual divorce petition.

This Court is informed that the First Motion was recorded

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yesterday, i.e., 11.03.2019 by the Family Court at Gurugram. In such circumstances, it is apparent that the parties have acted upon the mutual agreement, as such, inter se and are proceeding ahead to resolve the issue amongst themselves in a proper mode and with maturity, as is expected in a matrimonial matter, especially keeping in view the background to which the parties belong, which was one of the grounds for granting the interim protection on 06.06.2018, that it was more of a dispute on account of financial control of companies.

State Counsel, on instructions from ASI-Virender Singh, submits that the petitioner has been cooperating with the investigating and has joined at all relevant time and is not further required for the purpose of investigation. As is noticed, once the parties have themselves also agreed to settle the dispute which is incorporated in detail in the settlement/ agreement, which would put an end to at least 13 litigations, in such circumstances, this Court is of the opinion that the order dated 06.06.2018 is liable to be confirmed.

However, keeping in view the fact that the petitioner has been permitted to travel abroad on three separate occasions and has also filed another application bearing CRM-3166-2019, counsel for the petitioner is well justified that the condition incorporated in Section 438 (2) (iii) Cr.P.C., whereby this Court may include such condition that the person should not leave India without the previous permission of the Court, is not liable to be incorporated in the final order, confirming the anticipatory bail application.

For the said benefit, counsel for the petitioner has relied

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upon similar relief granted in CRM-M-55170-2018 titled *Ryan Augustine Pinto Vs. Central Bureau of Investigation*, decided on 22.02.2019, wherein the prayer was for modification of the terms and conditions incorporated in the order granting bail and the condition of not leaving the country without prior permission of the Court, was allowed, on the ground that he is a frequent visitor to foreign countries, to participate in conferences etc. and is promoting the business of the group of industries. Relief clause of the said judgment reads as under:

“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.

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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.”

Accordingly, keeping in view the above and the fact that this Court had permitted the petitioner to travel abroad three times and that he had, thereafter, come back and come present before this Court and the matter involved is matrimonial issue and the petitioner is not a financial fugitive, the prayer made is liable to be accepted.

The petitioner is also directed to furnish an undertaking in writing to make himself available during the course of investigation or trial, as and when he is required. Apart from that, he will also furnish 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. In case the compromise does not fructify, it will be open to the petitioner to file appropriate application before the Trial Court, seeking permission to travel abroad and take appropriate orders, accordingly.

With the above observations, the present petition is disposed of, confirming the anticipatory bail of the petitioner.

March 12th, 2019
sailesh

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*