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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 19.11.2019

+ CRL.M.C. 3990/2019

SUNITA ROHELA & ANR.

..... Petitioners

Through: Ms. Deepti Kathpalia, Advocate.

versus

STATE & ANR

..... Respondents

Through: Mr. M.S. Oberoi, APP for the State
with Inspector Vinod Ahlavat, P.S.
Bharat Nagar.

Mr. Sahil Munjal, Mr. Prateek
Goswami and Mr.C.M.Rajak,
Advocates for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

1. The petitioners have filed the present petition with the following prayer :

"To allow the present petition U/s 482 Cr.P.C for quashing the directions in the order dated 15.07.2016 passed by the Court of Ms. Sushila Bala Dagar, MM, Mahila Court, North West, Rohini, Delhi in FIR No. 118/2016 U/s

498A/406/34 IPC with PS Bharat Nagar whereby petitioners were restrained from leaving the country without seeking the permission and informing the court and consequently denying the permission to leave the country vide order dated 16.07.2018 passed by Ms. Akansha Vyas, MM, Mahila Court, North West and thereby upheld vide order dated 23.08.2018 by Shri Virender Bhatt, Ld. ASJ, North West, Rohini Delhi in the interest of justice."

2. On 11.07.2008, marriage between the son of the petitioners and respondent No. 2 was solemnized according to Hindu Rites and ceremony. Thereafter on 26.07.2008, respondent No. 2 and son of the petitioners went to United Kingdom and started living there as husband and wife. On 17.12.2015, the respondent No. 2 filed a complaint against the petitioners in CAW Cell, Nanak Pura, New Delhi and on 18.12.2015, respondent No. 2 further filed a divorce petition bearing HMA No. 1018/15 against the son of the petitioners.

3. On 18.02.2016, the petitioner's counsel informed the Addl. Commissioner of Police, CAW Cell that son of the petitioners had already filed a divorce petition in United Kingdom as both of them i.e. their son and respondent No. 2 are British citizens. Respondent No. 2 lodged an FIR bearing No. 0118/16 U/s 498A/406/34 IPC at police station Bharat Nagar, Delhi on 26.02.2016. The petitioners were lateron granted bail by the Trial Court in the said FIR.

4. On 22.12.2016, respondent No. 2 withdrew the divorce case filed by her in India before Family Court as a divorce decree was passed on 06.09.2017 by English Court dissolving the marriage between the son of the petitioners and respondent No. 2.

5. The Ld. counsel for the petitioners has argued on the lines of her petition. On the other hand, it has been argued by the Ld. Addl. PP for the State with counsel for respondent No. 2 that son of the petitioners namely Rohit Rohela has not joined the investigation and L.O.C. has already been opened against him. It is further argued by the Ld. Addl. PP for the state that the petitioners want to visit U.K. to meet their son so there is every likelihood that they will not return to India to face the prosecution against them.

6. The petitioners were denied the permission to leave the country vide order dated 16.07.2018 passed by Ms. Akansha Vyas, MM, Mahila Court, North West and this order was challenged by the petitioners before the Ld. ASJ who also vide order dated 23.08.2018 declined permission to the petitioners to visit U.K.

7. It is seen from the record that the petitioners have joined the investigation as and when directed by the IO. In my opinion, the petitioners who are senior citizens and want to visit their son in U.K. cannot be held as a bait to catch their son so that he appears in the case and face trial in FIR bearing No. 118/2016 U/s 498A/406/34 IPC registered at P.S. Bharat Nagar.

8. 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. In ***Anjal Kumar @ Angel Kumar v. State of Punjab*** 2010 (1) RCR (Criminal) 201, in somewhat similar circumstances, where a person was facing the criminal trial and was declined permission to go abroad, as the accused was facing trial in case under [Section](#)

420 , 406, 403, 34 IPC, the accused was allowed to go abroad and the Court observed as under:-

"3. Heard.

The cardinal principle of criminal jurisprudence, as applies in this country, is that every person is innocent till proved guilty and further that the Court presumes a human being to behave normally and this presumption continues till such time it is proved to the contrary. The fundamental right or civil right cannot be curtailed only if a criminal case is pending against a person.

4. In totality of the facts and circumstances of the case and in view the ratio laid down in *Naginder Singh Rana v. State of Punjab*, 2004(3) RCR (Criminal) 912, the order declining permission to the petitioner to go abroad does not appear to be correct. Thus, the impugned order dated 12.10.2009 is set aside. The petitioner is permitted to go abroad (Dubai/Abu Dhabi) for 5-6 days on the condition that he shall furnish security to the tune of Rs.4 lacs with one surety in the like amount to the satisfaction of the Court concerned. On the undertaking, as mentioned above, and on furnishing the security, as is ordered to the satisfaction of the Court concerned the petitioner shall be allowed to go abroad. He is directed to return to India on 7.11.2009."

9. The state has already taken the steps for procuring the presence of the son of the petitioners by opening L.O.C. and the law will take its own course. The son of the petitioners and respondent No. 2 have already been divorced vide divorce decree dated 06.09.2017 and as far as the question of visit of the petitioners to U.K. is concerned since their son in U.K. they are bound to go to U.K. to visit him. However, conditions can be imposed in order to seek their presence in India to face the trial.

10. Accordingly the present petition is allowed and consequently, the

impugned order dated 23.08.2018 passed by the Ld. Spl. Judge, CBI-01, North-West, Rohini, Delhi is set aside and the petitioners are permitted to go abroad (U.K.) on the condition that they shall furnish security to the tune of Rs.5 lacs each with two sureties each in the like amount to the satisfaction of the Court concerned below. On furnishing the security, as is ordered to the satisfaction of the Court concerned below the petitioners shall be allowed to go to U.K with the further condition that the petitioners will submit the complete detailed travel plan with the dates and places of stay in U.K. and they shall furnish the complete address of their permanent stay in U.K. to the trial court, three days prior to the date of actual travel. The petition is disposed of accordingly.

RAJNISH BHATNAGAR, J

NOVEMBER 19, 2019

Sumant