

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12418-2020 (O&M)
Date of Decision: 22.06.2020

Pardeep Kaur

.....Petitioner

Versus

State of Punjab

....Respondent

Present: Mr. Malkeet Singh, Advocate, for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Harnaresh Singh Gill, J. (Oral)

Case taken up for hearing through Video Conferencing.

The petitioner is one of the accused in FIR No.170 dated 26.10.2018 under Sections 420, 465, 467, 468, 471 and 120-B IPC , registered at Police Station Goraya, District Jalandhar. She is a Non Resident Indian and permanently settled in Canada. She was arrested from the airport, when she came to India on 11.02.2020 to attend the cremation of her mother. Later she was granted regular bail vide order dated 20.02.2020.

Pending the trial, the petitioner had moved an application for exemption from personal appearance before the trial Court and for further release of her passport to visit Canada. The said application was dismissed by the trial Court vide order dated 12.03.2020 (Annexure P.7.). The petitioner impugns the said order in the present petition.

Complainant-Jatinder Pal Singh is the son of Gurmej Kaur, sister of Sucha Singh. Sucha Singh was married to Harbans Kaur. They died issueless. Sucha Singh expired on 15.07.2017, whereas his wife Harbans Kaur died on 24.02.2017. Harbans Kaur was the real sister of Santokh Singh, father of the petitioner. Thus, she was petitioner's paternal aunt (Bua).

Before his death Sucha Singh had executed a Will dated 03.07.2017 in favour of the petitioner, as Sucha Singh and his wife Harbans Kaur had a great love and affection for the petitioner.

When Gurmej Kaur and Naginder Singh, sister and brother of Sucha Singh, had started asserting their rights over the properties of Sucha Singh, father of the petitioner had filed a Civil Suit for permanent injunction, wherein the trial Court had granted the order of status-quo qua possession. Subsequently, an amended plaint was filed in the said suit claiming the relief of declaration as well. Gurmej Kaur and Naginder Singh also filed a suit for declaration challenging the validity of the Will dated 03.07.2017. Both the said suits are pending adjudication before the courts concerned.

Learned counsel for the petitioner contends that the above noted FIR has been registered against the petitioner by complainant-Jatinder Pal Singh on the allegations that the Will dated 03.07.2017 executed by Sucha Singh in favour of the petitioner is a result of fraud. It is further submitted that neither at the time of the registration of FIR nor at the time of execution of the Will dated 03.07.2017, the petitioner was present in India and rather, she had been in Canada at that time. Therefore, it cannot be said that the petitioner was part of the alleged mechanism resulting into the execution of the Will dated 03.07.2017 by late Sucha Singh. It is further submitted that the said Will was executed by the testator out of his free will and as the petitioner was closely related to him, his desire to execute such Will in favour of the petitioner out of his love and affection for her cannot be disputed.

Even otherwise, it is submitted that the validity of the Will dated 03.07.2017 has been challenged before the Civil Court and the same is pending adjudication.

It is further submitted that the petitioner has been falsely implicated in the above noted FIR; she is a single parent; that she does

have three children out of whom her minor son, namely, Pavitar Singh had to undergo surgery for S/P sinus venosus ASD repair (major heart surgery) in July, 2019. There is none to provide him motherly support back in Canada. It is further submitted that the prayer of the petitioner for release of her passport to visit Canada has been illegally declined by the trial Court vide impugned order 12.03.2020.

While referring to CRM-13554-2020 filed by the petitioner showing her financial status and that of her father and brother, learned counsel states that the father and brother of the petitioner are ready to furnish the surety for release of the passport and/or grant of permission to the petitioner to visit Canada.

On the other hand, learned State counsel, while opposing the present petition, states that as the petitioner is accused in the above noted FIR and her being the Non Resident Indian, it would be very difficult to secure her presence before the Court, if she is allowed to visit Canada. It is further vehemently contended that the arrest of the petitioner could only be effected from the airport when she visited India to attend the last rites of her mother. Thus, a prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties and have gone through the case file.

It has come on record that the petitioner is an NRI and is a single parent. She does have three children. They are all in Canada. There is none to look after the children. At this stage, the petitioner does not dispute her arraignment as an accused in the above noted FIR. What is pleaded and sought for is grant of permission to her to visit Canada to meet her children. She further undertakes to abide by all or/any condition(s) to be imposed by this Court, to rejoin the criminal proceedings initiated against the petitioner. Still further, her father Santokh Singh and brother Devinderpal Singh, are ready to

stand surety and also to provide heavy surety in the form of FDs or any other kind of monetary surety, securing the presence of the petitioner.

In Chaitali Vs. State of Punjab, 2004(3) RCR (Criminal) 521, this Court, while granting permission to the petitioner therein to go abroad, held that the trial Court is empowered to grant permission to leave India. It was further held that every citizen has a fundamental and civil right to go abroad, which cannot be curtailed during the pendency of a criminal case.

In Sukhmani Brar Vs. U.T., Chandigarh, 2011(2) RCR (Criminal) 2, the petitioner therein, who had been a student in USA for past 6 years, was granted permission to visit USA with a direction to release her passport subject to her depositing Rs.20 lacs in the shape of a fixed deposit with the trial Court.

In Mohinder Singh Vs. State of Punjab and another, CRM-M-2754-2011 decided on 8.2.2011, permission was granted to the petitioner therein to visit USA, subject to furnishing of the surety with the further conditions, including the one that he shall return to India as and when called upon to do so.

It may be noticed that in CRM-M-46700-2019 filed by Santokh Singh, father of the petitioner, the proceedings emanating from the aforesaid FIR, have been stayed by this Court.

Though in this case, the charges are yet to be framed, yet the fact remains that as the proceedings before the trial Court stand stayed by this Court, the stage for framing the same would arise if, only and when, the stay granted by this Court is vacated. Thus, the observation of the trial Court that the charges are yet to be framed, is no ground to decline the release of passport of the petitioner. Still further, being a single parent, the indulgence sought for by the petitioner to meet her children, cannot be denied to her, unless it is exponential that the petitioner had in past disobeyed any condition(s)

imposed by the Court and/or there is any serious apprehension of her absconding the proceedings.

Still further, as per the documents on record and the averments made in the present petition, the petitioner is having her share in her parental house. Besides, her father, who is a co-accused, and her brother-Devinderpal Singh, both are ready to stand sureties as also grant heavy monetary sureties to ensure her return to India and not to abscond from the proceedings.

In view of the above, the trial Court is directed to release the passport of the petitioner subject to the following conditions:-

- i) The petitioner shall submit an undertaking that she shall appear personally before the trial Court as and when called upon to do so.
- ii) The petitioner shall furnish a long term FDR in the sum of Rs.8 lacs as a guarantee. In case, the petitioner fails to appear before the trial Court as and when called upon to do so, the said amount shall stand forfeited in favour of the State and the trial Court shall secure the presence of the petitioner by resorting to the appropriate legal provisions. Otherwise, at the conclusion of the trial, the said amount shall be released to the petitioner.
- iii) The counsel for the petitioner shall appear on her behalf on each and every date and will conduct the cross-examination of the prosecution witnesses. The petitioner shall not dispute the identity of the prosecution witnesses.

- iv) The petitioner shall abide by any other conditions imposed by the trial Court as deemed to be fit for securing the presence of the petitioner as and when required.

It is made clear that this order shall remain operative during the pendency of the trial of the case.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

22.06.2020
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No