

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

**Date of Decision: 15.07.2020
CRM-M-15287 of 2020**

1.

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

2.

CRM-M-15289 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

3.

CRM-M-15291 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

4.

CRM-M-15323 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

5.

CRM-M-15346 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

6.

CRM-M-15347 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

7.

CRM-M-15349 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

8.

CRM-M-15350 of 2020

Jaideep Singh

.....Petitioner

Vs.

Sahil Petroleum and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Deepak Sabherwal, Advocate,
for the petitioner(s).

Ms. Shivya Sehgal, Advocate,
for respondent No.1.

Mr. Alok Jain, Advocate,
for respondent No.2.

RITU BAHRI, J. (ORAL)

This order shall dispose of CRM-M-15287, 15289, 15291,
15323, 15356, 15347, 15349 & 15350 of 2020 together as common

questions of law and facts are involved in all the petitions.

Challenge in these petitions is to the orders dated 09.06.2020 (Annexure P-8) passed by the Judicial Magistrate, Ist Class, Jalandhar, in separate cases, whereby application(s) filed by the petitioner seeking permission to go abroad for two months and giving direction to the Regional Passport Officer to release his passport, have been dismissed.

Learned counsel for the petitioner, while referring to the order dated 30.05.2020 (Annexure P-5) passed by the Judicial Magistrate, Ist Class, Jalandhar, has argued that initially, the complaint filed under Section 138 of the Negotiable Instruments Act, titled as Sahil Petroleum vs. Jaideep Singh, was consigned to the record room vide order dated 17.11.2017, as the present petitioner had been declared as proclaimed person/absconder. Thereafter, he surrendered before the trial Court and was released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one surety in the like amount. The said complaint is now pending for 30.09.2020.

Learned counsel for the petitioner further argued that once, the petitioner had surrendered before the trial Court, he was no longer a proclaimed offender/absconder and that order was passed in his absence without following due procedure. However, keeping in view the order dated 17.11.2017, passport of the petitioner was impounded vide order dated 26.12.2019 (Annexure P-4). Learned counsel further argued that green card of the petitioner expired on 17.06.2020 and he made an application for release of his passport and permission to go abroad, which has been wrongly dismissed vide impugned order dated 09.06.2020 (Annexure P-8). After surrendering before the Court, petitioner no longer is a proclaimed offender, therefore, he had a right to get his passport released. Learned

Sultan Kamruddin Dharani vs. Union of India and others, 2008 (12) RCR (Criminal) 866 on the proposition that if, bail has been granted under Section 436 (1) of the Cr.P.C., condition to surrender the passport and not to leave the country with permission, cannot be imposed.

Learned counsel for respondent No.2-Regional Passport Office, Jalandhar has argued that vide letter dated 20.12.2019, respondent No.2 had received an information to the effect that Court of JMIC, Jalandhar had passed an order dated 17.11.2017 declaring the petitioner as Proclaimed Person. On the basis of said information, passport of the petitioner was impounded. Learned counsel has further argued that no other order was made basis for impounding his passport.

Learned counsel for respondent No.1, at the same time, argued that apart from the present complaint under Section 138 of NI Act, one civil suit and one MACT case is pending against the petitioner. If, the passport of petitioner is released, he will go to U.S.A. and avoid appearing in the criminal case.

Heard, learned counsel for the parties.

Parties are not in dispute with respect to the fact that vide order dated 30.05.2020 (Annexure P-5), petitioner surrendered before the Court and was released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one surety in the like amount and the next date before the trial Court is fixed for 30.09.2020. As per stand taken by respondent No.2, passport of the petitioner had been impounded only on the ground that he had been declared proclaimed offender as per order dated 17.11.2017. This Court is of the view that once the petitioner had surrendered before the trial Court

passport cannot be impounded keeping in view the order dated 17.11.2017 vide which, he was declared as proclaimed offender. Since that ground is no longer existing, the petitioner has a right to get his passport released. This aspect has been examined by the Bombay High Court in **Sultan Kamruddin Dharani's** case (supra), wherein it has been observed as under:-

“19. Thus, the position of the law is that a person who is alleged to have committed a bailable offence has an unfettered and absolute right to be enlarged on bail and the Court or the Police Officer concerned, as the case may be, has no discretion to grant or refuse bail. Subject to first proviso to sub-section (1) of [section 436](#) of the Code of 1973, the Court may modulate the condition of bail as regards the bail amount and the number of sureties. However, the Court cannot impose a condition which is not a term as to the bail. The condition of requiring a person accused of a bailable offence to surrender his passport to the Court is not a term as to bail. If in such a case a condition is imposed that bail is granted subject to condition of deposit of passport, such a condition will defeat the absolute right of the accused under [section 436\(1\)](#) of the said Code to be set at liberty. In the circumstances, while enlarging the Petitioner on bail in a bailable offence, the learned Magistrate has no jurisdiction to direct deposit of the passport. The Magistrate cannot impose a condition while granting bail in a bailable offence of not leaving India without the permission of the Court. Whenever the Petitioner is enlarged on bail, he is bound to attend the concerned Court on the date fixed or whenever he is called upon to do so. This obligation is created by the bail bond. If he desires to remain absent, he will have to seek an exemption from the Court. In a given case if there is an apprehension that the accused is likely to abscond, steps can also be taken under the appropriate provisions of law. Steps can be also taken for impounding the passport.

20. In the circumstances, I pass the following order :-

(1) The application is allowed by setting aside the direction in order dated 15th April 2006 of depositing the passport as well as the consequential direction that the Petitioner shall not leave India without prior permission of the Court.

(2) It is however clarified that the Petitioner is bound by the other conditions incorporated in the bail bonds.

(3) The passport of the Applicant shall be returned to him within a period of six weeks from today.”

Hon'ble the Supreme Court in Satish Chandra Verma vs. Union of India and others, 2019 (2) SCT 741 was examining a case, where appellant was denied foreign visit on the ground that departmental enquiry was pending against him. It was held that pendency of the departmental proceedings cannot be made a ground to prevent the appellant from travelling abroad. It has been further observed as under:-

“5. The **right to travel abroad** is an important basic human **right** for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal off freedom to go abroad and clearly show that this freedom is a genuine human **right**. (See: **Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248**). In the said judgment, there is a reference to the words of justice Douglas in **Kent v. Dulles 357 US 116** which are as follows:

“Freedom to go **abroad** has much social value and represents the basic human **right** of great significance.”

In the facts of the present case, offence under Section 138 of NI Act is a bailable offence and once the petitioner had appeared and furnished bail bonds vide order dated 30.05.2020 (Annexure P-5), no ground is left to impound the passport of petitioner. However, the passport will be released to the petitioner after furnishing adequate surety.

Resultantly, the impugned orders dated 09.06.2020 (Annexure P-8) are set aside and the passport of the petitioner is ordered to be released

subject to furnishing **surety of Rs.30 Lakhs** to the satisfaction of the trial Court/Duty Magistrate. Petitioner can go abroad for two (02) months.

All the petitions i.e. CRM-M-15287, 15289, 15291, 15323, 15356, 15347, 15349 & 15350 of 2020 are allowed accordingly.

15.07.2020
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No