

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

115

CRM-M-4706-2021 (O&M).

Date of Decision: 08.03.2021.

Maneet Kaur

....Petitioner.

Versus

State of U.T., Chandigarh and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Chanderhas Yadav, Advocate for petitioner.

Mr. Charanjit Singh Bakhshi, Addl. P.P., U.T., Chandigarh
for respondent No.1.

Mr. Sunil Chadha, Senior Advocate, with
Ms. Swati Verma, Advocate;
Mr. Akshay Chadha, Advocate; and
Mr. Armaan Sagar Chadha, Advocate
for respondent No.2.

Lalit Batra, J.

Present petition under Section 482 Cr.P.C has been moved by petitioner/complainant for setting aside order dated 14.01.2021 (Annexure P/10) passed by learned Additional Sessions Judge, Chandigarh, in case FIR No.178 dated 24.12.2019 under Sections 406 and 498-A IPC, registered at Women Police Station, Sector-17, Chandigarh, in terms of which, application moved by respondent No.2-accused seeking permission to proceed for sailing to Sea for eight months, has been allowed.

2. Learned counsel for the petitioner *inter alia* contends that petitioner/complainant was subjected to cruelty at the hands of respondent No.2-Bippenjeet Singh on account of demand of dowry and further

petitioner/complainant has suffered a lot as previously she was working as Assistant Manager in Federal Bank but on insistence of respondent No.2 and his mother, she had resigned from that job and now she has been asked by the said Bank to make the payment of bond amount. He further urges that due to torture and pressure exerted by respondent No.2, petitioner/complainant has suffered two abortions and ultimately she was forced to leave her matrimonial home. He further submits that respondent No.2 has never appeared in the mediation proceedings before Women Cell solely on the ground that he is a "Seafarer" and he was also extended concession of anticipatory bail by learned Additional Sessions Judge, Chandigarh, subject to compliance of provisions of Section 438(2) Cr.P.C. He further urges that vide impugned order dated 14.01.2021 (Annexure P/10), learned Additional Sessions Judge, has granted permission to respondent No.2 to proceed for sailing to Sea for 08 months in total (as respondent No.2 has to be in Ship for a minimum period of 06 months plus 01 month and 01 month time is given to him to sign the contract), subject to his furnishing surety in the form of Bank Guarantee in a sum of Rs.10 Lakhs. He further urges that as a matter of fact, respondent No.2 wants to evade the proceedings of trial and in case he is sincere in his approach, he being a freelancer can put on hold his work of freelancing for the time being and as such order dated 14.01.2021 (Annexure P/10) may be set aside.

3. Learned counsel for respondent No.1-UT submits that after presentation of final report under Section 173 Cr.P.C. (*Challan*), charges have been framed against respondent No.2-accused and case is fixed for 16.03.2021 for recording prosecution evidence. He further submits that

Management Pvt. Ltd. are in order and genuineness thereof has been verified.

4. On the other hand, learned senior counsel for respondent No.2 while opposing the cause of petitioner has vehemently argued that respondent No.2 is a 'Seafarer' by profession and is engaged as Marine Engineer Officer on Foreign Going Ships, his profession requires him to travel abroad. He further submits that though respondent No.2 is not on permanent roll of any shipping company but at present he is working for IMS Ship Management Pvt. Ltd. in the capacity of Second Engineer and on account of said profession sailing to Sea for atleast eight months is required. He further urges that apprehension in the mind of petitioner/complainant that respondent No.2 may not come back is altogether imaginary one as on previous occasions, respondent No.2 had gone abroad and that too for months together to earn his livelihood. He further urges that respondent No.2 being native of India has roots in this country as well as deep regard for his nation. He further urges that respondent No.2 had participated in the mediation proceedings and he never intended to evade the proceedings of trial but on account of his nature of job as 'Seafarer', he has to sail to Sea and as such order dated 14.01.2021 (Annexure P/10) rendered by Court granting permission to respondent No.2 for sailing to Sea for eight months, is sustainable in the eyes of law.

5. I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as documents placed on record at the instance of both the parties.

6. In the case in hand, respondent No.2-Bippenjeet Singh, is a

Foreign Going Ships, his profession requires him to travel abroad. At this juncture, it is pertinent to mention here that documents filed by respondent No.2 showing his Continuous Discharge Certificate-cum-Seafarer's Identity Document as well as employment with IMS Ship Management Pvt. Ltd. were supplied to respondent-UT for verification from quarters concerned, which were found in order and as such genuineness thereof has been verified. It will not be out of place to mention here that after completion of investigation of instant case FIR, final report under Section 173 Cr.P.C. (*Challan*) has already been presented in the Court and after framing of charges, trial has commenced. Respondent No.2 on account of his profession of 'Seafarer' is seeking time for sailing to Sea to earn his livelihood.

7. Hon'ble Supreme Court in case *Srichand P. Hinduja v. State through C.B.I., New Delhi, AIR 2002 Supreme Court 410* granted permission to go abroad to the accused in the said case. The case related to offences punishable under Sections 120-B and 420 IPC as also under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. In the said case also, a plea was raised that if the appellants therein were permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return to India to face the trial. It was noticed that the appellants therein were Indian Nationals at the time of registration of the FIR and thereafter they had acquired British and Swiss Nationalities. The Hon'ble Supreme Court, after considering the facts and circumstances of the case as an interim measure allowed the accused therein to go abroad subject to their furnishing adequate sureties.

8. This Court in case **Brij Bhushan Singal vs. Central Bureau of Investigation, 1994(3) RCR (Criminal) 498 (P&H)**, which is a case where the Special Judge granted bail to accused therein but impounded his passport to prevent him from going abroad, held that it was competent to review the order under Section 482 Cr.P.C. and ordered for release of the passport. Accordingly, the accused therein was permitted to go abroad and then return within four months subject to his furnishing security in the sum of Rs.25 Lakhs.

9. Hon'ble Delhi High Court in case **Manmohan Singh v. C.B.I., 2004 CrL.L.J. 2919** considered the contention that the petitioner therein had travelled abroad with permission of the Court on as many as eight occasions and on each occasion the Court had desired of him to furnish a Bank Guarantee/FDR for a substantial amount. It was held that where the petitioner had been allowed to travel abroad on various occasions and had not belied the trust of the Court bestowed upon him and neither caused any obstruction in the trial nor has he abused his liberty, in any manner, it would be appropriate and in the interest of justice to modify the condition of bail that requires him to surrender his passport to the Court and not to leave the country without prior permission of the Court by deleting the same.

10. Hon'ble Supreme Court in case **M/s Bhaskar Industries Ltd. v. M/s. Bhiwani Denim and Apparels Ltd. and others, AIR 2001 Supreme Court 3625** has held that it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence on his personal presence would itself inflict enormous sufferings or tribulations to him, and

the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interest of justice.

11. In view of above, as respondent No.2 is a 'Seafarer' by profession, to earn his livelihood, he has to sail to Sea and as such he has been rightly permitted for sailing to Sea. Further, every citizen has a fundamental and civil right to go abroad, which cannot be curtailed during the pendency of a criminal case, unless there be a specific order passed on that behalf, based upon material. This fundamental or civil right of respondent No.2 cannot be thwarted. Even otherwise Section 273 Cr.P.C. provides that when personal attendance of accused is dispensed with, all evidence or other proceedings, can be taken in the presence of his pleader. In the instant matter, there is no dispute in respect of identity of accused (respondent No.2) as complainant herein is the wife of accused. In these circumstances, during the absence of respondent No.2, the proceedings in the case would not be affected for the duration he is abroad.

12. Keeping in view the aforementioned facts and circumstances, it would be just and expedient to allow respondent No.2 for sailing to Sea for a period of six months and three weeks more for unforeseen circumstances. Date of commencement of above said schedule would be from 20.03.2021 and on culmination, respondent No.2 shall report to the Trial Court on 11.10.2021, subject to the conditions as enumerated hereunder:-

- (i) Respondent No.2 shall furnish an affidavit to the effect that he shall not dispute his identity during the trial.

(ii) Respondent No.2 shall bind himself by executing an affidavit that in his absence his counsel/pleader shall appear before the Trial Court on his behalf on each and every date of hearing.

(iii) Condition of furnishing surety in the form of Bank Guarantee to the tune of Rs.10 Lakhs by respondent No.2, imposed vide impugned order dated 14.01.2021 (Annexure P/10), is quite reasonable and has to be complied with in letter and spirit.

13. Respondent No.2 is required to complete all the above said formalities before the Trial Court well before 20.03.2021.

14. With above said modifications in the impugned order dated 14.01.2021 (Annexure P/10), instant petition moved by petitioner/complainant being devoid of merits, is dismissed.

15. In any case, this order would not adversely affect further proceedings in the Trial Court and the Court will deal with the matter without being influenced in any way by this order and shall proceed in the matter in accordance with law.

CRM-6411-2021

Since the main petition itself has been dismissed, instant application stands disposed of.

(LALIT BATRA)
JUDGE

08.03.2021

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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No