

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

**CRM-M-26294-2021
Date of decision: 16.07.2021**

Khushal Singh**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Akshay Chadha, Advocate
for the petitioner.

(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for granting permission to the petitioner to go abroad, who is facing trial in case FIR No. 235 dated 27.11.2017 (Annexure P-1), registered under Sections 406 and 420 of the IPC at Police Station Jamalpur, District Ludhiana, w.e.f. 01.08.2021 till 31.01.2022.

At the very outset, learned counsel for the petitioner relies upon order dated 03.02.2020 passed in CRM-M-2431-2020 (Annexure P-8) to submit that even on an earlier occasion, the petitioner has been granted permission to travel abroad and after availing the said concession, he has returned back well within the time and has never misused the same. The operative part of the said order reads as under:

“Learned senior counsel for the petitioner submits that the petitioner has already filed a petition i.e. CRM-M-19285-2018, praying for quashing of the aforesaid FIR, in which the following order has been passed on 07.05.2018:-

“Prayer in this petition is for quashing of

FIR No.235 dated 27.11.2017 under Sections 406 & 420 IPC, registered at Police Station Jamalpur, District Ludhiana and all the subsequent proceedings arising therefrom.

Learned senior counsel for the petitioners submits that the FIR has been registered on two grounds; first that petitioner No.1 has entered into an agreement to purchase 07 kanals of land from Jasbir Kaur, who is his real sister, vide agreement to sell dated 13.02.2014. Later on, the complainant Hardeep Singh purchased the said land vide sale deed dated 02.05.2016. It is further submitted that thereafter, petitioner No.2 had filed a suit for specific performance on the basis of aforesaid agreement to sell, however, the matter was compromised between petitioner No.2 and Jasbir Kaur vide compromise dated 01.12.2017 (Annexure P4) and on the basis of this compromise, the suit filed by petitioner No.2 was decided by the Lok Adalat at Ludhiana and petitioner No.2 had withdrawn the suit in view of the compromise on 09.12.2017. It is also submitted that as per the compromise between petitioner No.2 and Jasbir Kaur, sale deed dated 02.05.2016 executed in favour of respondent No.2-complainant Hardeep Singh was kept intact and therefore, no offence under Section 420 IPC is made out.

Learned senior counsel for the petitioners further submits that second ground for registration of the FIR is with regard to a dispute of passage regarding which there was a settlement between petitioner No.1 and complainant Hardeep Singh that they will leave this passage out of the joint land as there is no partition by metes and bound. Learned senior counsel has referred to operative part of the FIR, where the inquiry officer has held

that while doing the spot inspection, petitioner No.1 has not objected regarding use of the passage, which was left in the settlement and the complainant Hardeep Singh could not produce any document in respect of the passage, which he claimed to have purchased from Gurwinder Singh and another. It is further submitted that even in the earlier inquiry, it was found that the matter is of civil nature and no offence is made out.

Notice of motion for 13.09.2018.

Notice re: stay also.

The Investigating Officer is directed to file a specific affidavit with regard to the inquiries conducted by the police before registration of the FIR holding that the dispute is of civil nature and how opinion was formed to register the present FIR.”

Learned senior counsel for the petitioner further submits that the said petition is now pending for 25.02.2020. It is further submitted that the petitioner is a green card holder and he came to India for managing his properties and he was involved in the present litigation. It is also submitted that the petitioner has moved an application before the trial Court for seeking permission to travel abroad from 25.12.2019 till 27.03.2020, however, the said application was dismissed vide impugned order dated 14.01.2020.

Learned senior counsel has argued that the only reason given, while dismissing the application, is that the same is without any substance, as it is not stated about any contingency/eventuality, which is likely to arise, if the petitioner is not granted permission to go to USA. It is further argued that since the petitioner is holding green card, he is required to appear before the authorities in USA and for that purpose, he is urgently required to visit USA. It is next submitted that the petitioner is ready to furnish the requisite bonds before the trial Court for the aforesaid purpose.

Learned State counsel, on instructions from ASI

Subhash Raj, has submitted that challan stands presented and since the matter was reinvestigated, case is at the stage of presentation of supplementary challan and it will take some time. Learned State counsel could not dispute that presence of the petitioner would be required only at the stage of framing of charge, if any and it may take some time.

After hearing learned counsel for the parties, present petition is allowed and the impugned order dated 14.01.2020 is set aside. The petitioner is granted permission to travel USA till 30.04.2020, subject to depositing of Rs.5.00 lacs with the trial Court and furnishing of surety bonds.

The petitioner shall also furnish an undertaking that in case he failed to return back to India or appear before the trial Court on or before 30.04.2020, the said amount of Rs.5.00 lacs shall stand forfeited to the State.

It is also clarified that before leaving India, the petitioner shall inform the Investigating Officer/SHO of the concerned Police Station and submit his itinerary along with boarding details and details of the places where he is travelling along with the details of his stay. He will also furnish an undertaking that on his arrival back to India, he will furnish the information to the concerned Investigating Officer/SHO of the concerned Police Station.”

Learned counsel for the petitioner further submits that the amount of Rs. 5 Lacs, which was deposited by the petitioner in compliance with aforesaid order, still stands deposited with the trial Court as the petitioner has not withdrawn the same.

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab, who is also appearing through video conferencing, accepts notice on behalf of the respondent-State and could not dispute the factual position as stated above, however, he submits that a petition, seeking quashing of the FIR, filed by the petitioner, is also pending before this Court.

After hearing learned counsel for the parties, the present petition is allowed and the petitioner is granted permission to travel USA from 01.08.2021 till 31.01.2022, subject to following conditions:

- (i) The amount of Rs. 5 Lacs, already deposited by the petitioner, shall be kept as a security;*
- (ii) The petitioner shall also furnish an undertaking to the trial Court that in case he fails to return back to India or appear before the trial Court on or after 01.02.2022, the said amount of Rs.5. Lacs shall stand forfeited to the State.*
- (iii) The petitioner, before leaving India, shall also inform the Investigating Officer/SHO of the concerned Police Station and submit his itinerary along with boarding details, his mobile number and details of the places where he is travelling along with the details of his stay. He will also furnish an undertaking that on his arrival back to India, he will furnish the information to the concerned Investigating Officer/SHO of the concerned Police Station.*

16.07.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No