

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.39463 of 2021 (O&M)

Date of Decision:28.10.2021

Gaurav Raheja

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

Mr. A.S. Gill, Sr. DAG, Punjab.

None for respondent No.2.

Mr. K.B. Raheja, Advocate
for the complainant.

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JAISHREE THAKUR, J. (ORAL)

CRM No.36126 of 2021

Application is allowed.

Annexures P-16 to P-27 are taken on record.

CRM-M No.39463 of 2021

1. This is a petition that has been filed under Section 482 Cr.P.C. for directing the respondents to issue a Police Clearance Certificate (hereinafter referred to as PCC) to enable the petitioner to obtain an Australian Resident Return Visa, which according to the petitioner is due to expire on 13.05.2021.

2. In brief, the facts are that the petitioner herein solemnized marriage with the complainant in FIR No.204 dated 20.12.2018 registered under Sections 406, 498-A IPC at Police Station City-I Abohar, District

Fazilka. As per the said FIR, the main allegations pertain to demand of dowry and ill-treatment. The petitioner, who was residing in Australia, was summoned and made to face trial after due efforts were made to secure his presence through the Australian Embassy. The petitioner came back to India, put his appearance before the trial Court and secured bail. He moved an application seeking permission to go abroad in order to save his Permanent Resident Status and assured the Court that he will return back to face trial. This very Court vide its order dated 18.03.2021 permitted the petitioner herein to travel abroad, subject to adequate security being furnished before the trial Court and the petitioner sought to furnish the adequate security pertaining to a residential house registered in the name of his father valued at ₹22,55,000/- located at Sri Muktsar Sahib besides a commercial property valued at ₹49,82,000/- in the name of his father. In fact, permission to travel abroad and return to India within a period of six months was subject to the following conditions:-

“(i) That he will furnish property papers pertaining to the shop and deposit the same with the trial Court.

(ii) That he would have no objection in case the said property is forfeited in favour of the complainant on the petitioner not returning.

(iii) That he supports the application of his son to travel abroad that he is ready and willing to furnish title deeds of the shop which is valued at Rs.49 lakh approximately to the trial Court to be held as security to ensure the return of his son from Australia.

(iv) That in case his son does not return to face trial within the stipulated time, he would raise no objection to the property being forfeited in the name of the complainant."

3. In terms of the said order and the conditions imposed, the petitioner on compliance went abroad and thereafter, the present petition has been filed stating that he would require PCC in order to be able to

obtain a Resident Return Visa.

4. Learned counsel for the petitioner in support of the prayer sought in the petition relies upon the judgment rendered by the Bombay High Court in ***Kishor Tulshiram Sambherao Vs. The State of Maharashtra and others*** in Writ Petition No.82 of 2020 decided on 20.03.2020 and the judgment passed by a Coordinate Bench of this Court in CRM-M No.19606 of 2014 titled as ***Jagjeet Singh Vs. State of Punjab and another*** decided on 30.05.2014 wherein in similar circumstances, directions had been issued to issue a PCC within three days.

5. Notice of this petition was issued to the respondent-State and a reply on behalf of the respondent-State has been filed wherein it is stated that the PCC cannot be issued, considering the fact that on account of matrimonial dispute between the parties, an FIR is pending in which the petitioner herein is facing trial.

6. Appearance has been caused on behalf of the complainant, who is not a party to the said proceedings, who would submit that with great difficulty presence of the petitioner was secured and a deliberate effort is being made not to return to India and face trial and therefore, he would not be entitled to PCC as sought. It is also argued that the petitioner herein is seeking to become an Australian Citizen and in case the PCC is issued he would no longer be amenable to the jurisdiction of the Indian Courts.

7. I have heard learned counsel for the parties and have perused the paper book as well as the case laws cited. A perusal of the reply filed on behalf of the respondent-State would clearly reflect that the office of respondent No.3 has *not recommended* the issuance of PCC to the

petitioner on the ground that the petitioner is involved in FIR No.204 dated 20.12.2018 registered under Sections 406, 498-A IPC at Police Station City-I Abohar, District Fazilka. The judgment passed by a Coordinate Bench of this High Court as relied upon by learned counsel for the petitioner is at variance with the facts of the instance case and therefore, cannot be relied upon. However, in the judgment as rendered by the Bombay High Court under similar circumstances, PCC was directed to be issued within a period of three days.

8. In the instant case, the petitioner has been permitted to travel abroad after he had furnished adequate security by depositing title deeds of immovable properties belonging to his father. After the deposit of title deeds, it is further stated by the father of the petitioner that in case his son does not return to India to face trial within the stipulated time, he will have no objection to the property being forfeited in the name of the complainant. On the said affidavits filed, the petitioner herein was permitted to travel abroad. In case the petitioner does not return as undertaken, the courts are competent to take appropriate action. In this regard the concern and apprehension of the complainant and the prosecution to the effect that the petitioner would not return, is set at rest. The petitioner through this petition is seeking a PCC from the Police Station at Sri Muktsar Sahib, which has not been issued only on account of the fact that instant FIR is pending against him. In the opinion of the Court, the respondent-State cannot withhold the issuance of the police clearance certificate merely on the ground that the FIR is pending. This would tantamount to placing an unreasonable restriction on the right of the petitioner to exercise his

fundamental right under Article 19 and 21 of the Constitution of India. Therefore, the respondents are directed to issue a Police Clearance Certificate within a period of three days to the petitioner mentioning details of the instant FIR pending against him and of any other criminal case/proceedings pending against him, and thereafter it would be a call to be taken by the Australian Government whether or not they would like to issue a Resident Return Visa to the petitioner.

9. With the aforesaid observations, the instant petition stands disposed of.

October 28, 2021
Pankaj*

(JAISHREE THAKUR)
JUDGE

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