

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

CRM-M-40170 of 2020

Date of decision :-23.04.2021

Jaspal Kaur Bhinder

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.A.S. Barnala, Advocate for the petitioner.

Mr. Saurabh Khurana, DAG, Punjab for respondent No.1-State.

Mr. Gautam Dutt, Advocate for complainant-respondent No.2.

SUVIR SEHGAL, J.

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of order dated 01.10.2020, Annexure P-1, passed by the Sub-Divisional Judicial Magistrate, Dasuya, District Hoshiarpur, in FIR No.208 dated 28.12.2017, lodged for offence under Section 498-A of the Indian Penal Code, 1860 at Police Station Dasuya, District Hoshiarpur, Annexure P-2, whereby the application filed by the petitioner seeking permission to go to Canada for a period of four months has been declined.

Counsel for the petitioner has submitted that a complaint was submitted by Narinder Pal Singh, father of her daughter-in-law against four persons including the petitioner, but after investigation, FIR, Annexure P-2, was registered only against her son, Amandeep Singh Binder. On an application moved under Section 319 of the Code, the petitioner was summoned as an additional accused in the FIR and this order has been challenged by her before the Additional Sessions Judge in a revision, which is pending. Counsel submits

that the petitioner is a permanent resident of Canada and has been issued a provisional permanent residency by the concerned authorities from 26.07.2016 till 21.09.2021 and the petitioner has to complete a stay of two years in Canada during this period to get a permanent residency, out of which a period of approximately four months remains. He has referred to the passport and the provisional PR Card, Annexures P-3 and P-4. He submits that in case the revision filed by the petitioner is accepted by the Sessions Court, the petitioner would no longer remain an accused and there can be no hinderance in her travel abroad. He has referred to the documents Annexure P-5 to P-7, which are copies of the bank statement, jamabandi and a Will executed by her father-in-law to contend that the petitioner has a good financial status and the trial Court erred in dismissing the application by holding to the contrary. He has submitted that the petitioner will furnish a bank guarantee to the tune of Rs.25 lacs to show her bona fides.

Opposing the petition, counsel representing the State as well as the complainant have expressed an apprehension that the petitioner will not come back to India and the progress of the trial will be hampered as her son has been declared as a proclaimed offender, which order he has challenged before this Court on a false ground though its operation has been ordered to be stayed on 14.03.2019, Annexure R-2/2, and he was directed to join the investigation. It has further been submitted that despite the interim order passed by this Court, Amandeep Singh Bhinder has not joined the investigation. They have doubted her financial position.

I have considered the contentions raised by the counsel for the parties and examined the paper book/record with their able assistance.

As a doubt had been raised by the counsel representing the respondents regarding the financial status of the petitioner, a report was called for on the documents annexed by the petitioner with the petition. A short reply

by way of additional affidavit has been filed by the Deputy Superintendent of Police, Sub Division Dasuya, District Hoshiarpur dated 22.03.2021 wherein it has been deposed as under:

“2. That it is humbly submitted that the Police of P.S. Dasuya verified the status of property of the petitioner from the office of Tehsildar, Ludhiana (West) and the Tehsildar, Ludhiana (West) called report from Halqa Patwari Mandeep Singh and the Halqa Patwari Mandeep Singh gave report that Jaspal Kaur wife of Raghuwant Singh son of Hazara Singh is owner of 0 kanal, 10 marlas property situated at village Sanet, which bears Khewat No.1480/1639, Khasra 451 (20-18) recorded in Jamabandi 2011-12 and this property is worth Rs.2,10,00,000/- and the report of Mandeep Singh Halqa Patwari was countersigned by Tehsildar, Ludhiana (West). The true translation of writing dated 17.02.2021 is Annexed as Annexure R-1/T.

3. That it is humbly submitted that the police of P.S. Dasuya also verified bank balance of the petitioner Jaspal Kaur Bhinder in Account No.07121000071006 from Punjab and Sind Bank, Branch Baba Ishar Singh Public School, near Bhai Randhir Singh Nagar, Ludhiana and it was found that the petitioner Jaspal Kaur Bhinder has amount of Rs.21,873/- as bank balance in her account No.07121000071006 in Punjab and Sind Bank, Branch Baba Ishar Singh Public School, near Bhai Randhir Singh Nagar, Ludhiana from 28.10.2020 to 16.02.2021. The true copy of the account statements of petitioner is annexed as Annexure R-2.”

From a perusal of the above affidavit, it stands established that the petitioner owns 10 marlas of land in District Ludhiana, the market value of which is Rs.2.10 crore. Though her bank balance is reported to be Rs.21,873/-

as on 16.02.2021 but when her bank statement, Annexure P-5, of the some saving bank account pertaining to the previous financial year is seen, it is apparent that the balance lying to the credit in her account has ranged between Rs.1 lac to Rs.5 lac. Therefore, it cannot be said that her financial position is not good. The reasoning given by the trial Court, therefore, cannot be sustained.

The petitioner has been granted provisional permanent residency till 21.09.2021 and she is required to complete the requisite stay of a period of 02 years in Canada so that her status can become permanent. The factual position regarding the travel documents and her residency status cannot possibly be disputed.

Hon'ble Supreme Court in **Sri Chand P. Hinduja versus State through CBI, New Delhi**, 2002 (3) RCR (Criminal) 186, which has been followed by this Court in **Vikramjit Singh alias Vikram versus State of Punjab**, 2014 (4) AICLR 478; **Paramjit Singh and others versus State of Punjab**, 2011 (5) RCR (Criminal) 74; **CRM-M-19551-2013, William Scott Pinckney versus U.T.Chandigarh**, decided on 17.06.2013; **CRM-M-2150-2019, Utkarsh Pahwa versus Assistant Director (PMLA), Directorate of Enforcement**, decided on 23.01.2019; **CRM-M-20817-2020, Yogender Pal Walia versus State of Punjab**, decided on 29.07.2020 and **CRM-M-48671-2018, Hemant Goyal versus State of Haryana**, decided on 01.11.2018, has held that the accused has a fundamental right to travel abroad though conditions can be imposed to ensure his presence before the trial Court and in case of violation of any condition, appropriate coercive order can be passed.

The petition is, accordingly, allowed and impugned order dated 01.10.2020, Annexure P-1, is set aside. The petitioner is permitted to visit Canada for a period of four months on the condition that she will return to India on or before 22.09.2021 and she will furnish adequate surety and bank guarantee of Rs.25 lac, to the satisfaction of the trial Court. The trial Court will

be at liberty to impose any other reasonable condition as it deems appropriate.

Upon her return to India and submitting an application, the trial Court shall release the surety/bank guarantee. It is made clear that in case, the petitioner does not comply with the conditions imposed by this Court, the bank guarantee and surety shall be forfeited without any notice and the same shall vest with the Central Government.

23.04.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No