

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7322 OF 2022**

Shaista Irphan Mogul

.. Petitioner

Versus

Irphan Aman Mogul

.. Respondent

...

Mr.P.K.Sanghrajka i/b Rajeev Sawant & Associates for the
Petitioner.

Mr.Vivek Kantawala with Mr.Amey Patil i/b M/s.Vivek
Kantawala & Co. for the Respondent.

...

CORAM: BHARATI DANGRE, J.

DATED : 23rd JUNE, 2022

P.C:-

1. By the present writ petition, the petitioner/wife has raised a challenge to the order passed by the Family Court at Bandra dated 15/06/2022, rejecting the application filed by her, seeking a direction to the respondent/husband to accord his no-objection for permitting the child to travel to Switzerland, from 03/07/2022 to 28/07/2022.

2. The petitioner and the respondent share an estranged relationship and are separated since 2012. As far as the matrimonial discord between them is concerned, I need not get into the minute details.

Suffice it to say that the petitioner filed an application before the Family Court stating that she wants to take child Armaan, aged 14 years, to Switzerland for vacation alongwith her parents, who are bearing the expenses of the tour. She averred that she is ready to abide by all the necessary conditions and will return on the scheduled date. The NOC of the respondent/father was sought for, since the document received from Embassy of Switzerland in India, therefore, contemplates an NOC on part of the respondent/husband, since she was not the sole custodian of the child, who is a minor.

3. The application was considered by the Family Court and reference was made to the offence registered against her and to the anticipatory bail application moved by her. This appears to be the main ground and, therefore, the Family Court has held that since the proceedings are not yet disposed off finally, permission to travel abroad cannot be granted.

4. It is not in dispute that the petitioner/wife is arraigned as an accused in C.R.No.110 of 2020 registered with Azad Maidan Police Station, invoking Sections 419, 420, 465, 467, 468, 471 read with Section 120-B of the IPC, on the complaint being lodged on 04/06/2020 alleging that the applicant had fabricated summons of Police Station purportedly issued under Section 91 of IPC and submitted it to the Bank for obtaining bank statement. In the said C.R., the respondent/husband is the complainant.

On 12/02/2021, the applicant/petitioner was admitted to ad-interim protection, subject to she reporting to the Investigating Officer as and when called for. On 22/11/2021, the order passed on the earlier occasion came to be confirmed, releasing the applicant/petitioner on bail in anticipation of her arrest.

Another aspect of the matter is, the co-accused in the same C.R. had approached the Division Bench of this Court by filing Writ Petition (St) No.731 of 2020 and the investigation in the said C.R. has been stayed at his instance.

5. The petitioner is presently enjoying the protection from arrest at the instance of this Court in the wake of the aforesaid order.

6. In any case, this Court has not imposed any condition restraining her travel abroad and, therefore, I see no hesitancy why she shall not be permitted to travel outside the country. As far as she being permitted to travel abroad alongwith child Armaan, who is a minor, the learned counsel for the respondent Mr.Kantawala has expressed his serious objection on account of the fact that the academic year of the child had begun and this would cause an interruption in his study and he will be missing 10 working days of the school.

The learned counsel for the petitioner has invited my attention to the NOC accorded by the school, while his VISA was obtained and impliedly indicate that they have no-objection to child travel abroad. The petitioner has also placed

on record the itinerary, depicting the journey to commence from 03/07/2022 and coming to an end on 19/07/2022. The aforesaid itinerary shall also be made available to the Investigating Officer of C.R.No.110 of 2020 pending with Azad Maidan Police Station, before the petitioner leaves the country and the Investigating Officer shall make note of the proposed date of travel and return.

7. My attention is also invited to an order passed by the Family Court on 17/05/2017, on the consent terms entered into between the parties. The consent terms in clear words record that the parties have settled the issue as regards the access to the children to be provided to the father/respondent at certain intervals. In terms of the aforesaid consent terms, the respective petitions filed by the parties before the Family Court came to be disposed off.

As a consequence, no proceedings are pending between the parties and the petitioner is the custodian of the children, including the minor child Armaan whereas the father is only entitled for access.

The aforesaid order shall be brought to the notice of the Embassy so that the aspect of no-objection from the father can be done away.

8. There is no apprehension expressed on behalf of the respondent/husband that child will not return back. Since, there is no embargo on the travel of the petitioner abroad as a condition of her release on bail at the instance of this Court,

the said factor was unnecessarily harped upon by the learned Family Court while refusing the permission.

With an assurance from the petitioner that she alongwith child will return India on 19/07/2022 and shall mark her presence before the Investigating Officer on 19/07/2022, the impugned order is quashed and set aside.

The writ petition is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)