

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

**CRM No. 12177 of 2022 in/and
CRM-M No. 8077 of 2022
Date of Decision: 06.04.2022**

Sukhwinder Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab
for respondent No. 1 / State.

Ms. Simsi Dhir Malhotra, Advocate
for respondent No. 2 (Applicant in CRM-12177-2022)

SURESHWAR THAKUR, J. (ORAL)

1. With the consent of the learned counsel for the parties, the main case, which stands listed for hearing on 02.05.2022, is preponed, and, is taken up today itself.

2. The present petitioner is aggrieved from complaint in FIR No. 74 of 22.06.2021 (Annexure P-1), registered at Police Station Begowal, District Kapurthala, constituting therein offences under Sections 323, 324, 427, 34 of the IPC.

3. The learned counsel appearing for respondent No. 2, has, by way of filing an application bearing CRM-12177-2022, appended therein an order, made by the learned Judicial Magistrate concerned, wherethrough, the proposal, as, made by the Investigating Officer (IO) concerned, for discharging respondent No. 2 / Jaswinder Singh qua offence constituted in

4. Be that as it may, respondent No. 2 – Jaswinder Singh, had moved an application, before the learned Judicial Magistrate concerned, seeking leave of the Court to permit him to travel Canada, on the date(s) mentioned in the schedule / itinerary concerned. The learned Judicial Magistrate concerned, proceeded to allow the apposite application, and, imposed the hereinafter extracted conditions upon him.

“ By way of present application, the applicant/accused Jaswinder Singh wants to go Canada to meet his wife. The applicant undertakes to furnish the bank guarantee and he further undertakes to return India as ordered by this court. Keeping in view the given circumstances, and in the interest of justice, the present application stands allowed, and the applicant/accused Jaswinder Singh is permitted to go Canada to meet his wife with the condition to furnish bank guarantee of Rs.20 lacs from some nationalized bank alongwith furnishing two sureties of Rs.20 lacs each, with direction to come back India before 25.03.2022 to join the proceedings of this case. It is made clear that in case the accused/applicant Jaswinder Singh fails to return India or absconds from the Court, in that case the amount of said guarantee will be forfeited to the State, and necessary legal action shall also be taken against the sureties. It is also made clear that the period of visiting Canada shall not be extended in any circumstances. Further, the applicant shall intimate his itinerary to the police prior to leaving India; Applicant shall not travel to any other country except Canada.”

5. The above made order, on 04.02.2022 (Annexure P-5), by the learned Judicial Magistrate concerned, becomes challenged, by the aggrieved complainant / petitioner herein.

6. Though, as afore stated in respect of FIR (supra), the learned

Magistrate concerned, has made an order of discharge qua respondent No. 2 herein. However, per se upon the afore order being made, it cannot be concluded, that it has acquired at finality, as, there is yet a, possibility of a challenge being thrown to it at the instance of the petitioner herein.

7. If so, the only relevant fact which is required to be borne in mind is whether the conditions above, as, became imposed by the learned Magistrate concerned, upon the petitioner, are just and reasonable, and, or make sufficient deterrence upon him, against his returning to India, for his facing / undergoing sentence(s), as, he may be required to undergo, after the challenge made to order (supra), as, made by the learned Magistrate concerned, rather achieving success.

8. In determining the aforesaid factum of the reasonableness justness, or / and, validity of the condition (supra), as, became imposed upon respondent No. 2 herein, this Court is of the view, that the afore imposed conditions are required to be modified, to the extent, that in addition to the afore condition being complied with respondent No. 2, the latter shall also furnish personal and surety bonds comprised in a sum of Rs.1 lakh each, to the satisfaction of the learned Magistrate concerned.

9. However, at this stage, the learned counsel appearing for the petitioner has yet argued, that since respondent No. 2 herein is served with a notice under Section 60 of the NDPS Act, thereupon, given pendency of criminal cases against the petitioner or likely to arise against him. Therefore, the applied leave for, as, granted to respondent No. 2 to travel abroad, be declined to him, as in the face of above, there is every likelihood of his

fleeing from justice or absconding.

10. However, even the afore made prayer cannot accepted, as, the learned counsel for respondent No. 2 herein, has produced a copy of verdict made by the learned Special Court, Fazilka, upon, NDPS Act No. 157 of 2017, titled as “*State Vs. Ravinder Singh @ Ravi and others*”, wherein in the array of accused concerned, the name of respondent herein is not carried. Though, in the operative part of the verdict (supra), there is a reference, that confiscation proceedings be drawn against the owner of truck concerned, wherein, the seized contraband was carried. Nonetheless, the learned counsel for petitioner submits, that the petitioner would be challenging the afore drawn confiscation proceedings. If so, and also believing the further statement made at the Bar, by the learned counsel for respondent No. 2, that the omission of inclusion of respondent No. 2 herein, in the array of accused NDPS case (supra), was not in consequence of his becoming declared a proclaimed offender. Therefore, it appears that apart from the truck of the respondent herein being allegedly used for transporting therein, the narcotic drug concerned, he did not rather commit any penally inculpable offences, nor, therefore, hence, his name became validly not included in the array of accused in NDPS case (supra). Consequently, the afore made submission is rejected.

11. The impugned order, made by the learned Court, but with the afore made modifications, is upheld,

12. The learned Magistrate concerned, is also directed to, forthwith, release the passport of respondent No. 2.

13. Disposed of.
14. The pending miscellaneous application, also, stand disposed of.

April 06, 2022
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(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>