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

CRM-11596-2022 IN/AND
CRM-M-8834-2022
Date of decision:05.04.2022

SURINDER KAUR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Harvinder Singh Mann, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

CRM-11596-2022

The present application has been filed for preponing the date of hearing of main case.

For the reasons recorded in the application, the application is allowed. Main case is taken up today.

Main case

1. The petitioner herein became charged for commission of an offence embodied under Sections 3, 4, 5 of Medical Termination of Pregnancy Act, 1971, and, under Section 416 of the IPC. The offences (supra), the afore offences, are carried in FIR No.33 of 17.02.2016, registered at Police Station Jakhal, District Fatehabad.

2. The learned trial Magistrate concerned, after concluding trial, upon the FIR (supra), made thereons a verdict of conviction, on 03.03.2020, and, thereafter through a separate sentencing order drawn, on 04.03.2020, proceeded to sentence the convict to undergo simple imprisonment for a period of one year,

and, to pay a fine of Rs.5,000/-, for commission of an offence punishable under Section 419 of the IPC.

3. The aggrieved convict has preferred an appeal thereagainst before the learned Sessions Judge, Fatehabad. There is no strife amongst the counsel appearing for the respective litigants, that during the pendency of an appeal, before the learned Sessions Judge, Fatehabad, the latter had proceeded to order for the release of the present petitioner from judicial custody, however, subject to compliance being made with respect to certain conditions, as, become imposed, upon her. Consequently, the present petitioner after becoming released on bail, during the pendency of the apposite appeal, as becomes reared before the learned Sessions Judge, Fatehabad, hence moved an application, wherethrough, she strived for the making of an affirmative order qua hers being permitted to travel to USA, on the dates mentioned, in the application, hence, for ensuring hers taking care of her two minor children. Moreover, another ground which became averred in the application, is comprised in her traveling abroad, becoming necessitated from hers attending the convocation of her daughter, which is stated in the application to be scheduled in the month of May, 2022. However, the learned Sessions Judge, Fatehabad through his making an order thereons, on 18.02.2022, declined relief to the petitioner, on the ground, that the above setforth grounds, in the application are not justifiable, and, also, upon, a further ground, that in case she is permitted to travel, then there is every likelihood of hers absconding from justice.

4. The learned Sessions Judge, Fatehabad in making the above order, which has been challenged before this Court, has unnecessarily emphasized, upon, the above grounds, even when no tangible evidence for supporting the truth thereof, rather existed before him. The learned Sessions Judge, Fatehabad

was required to bear in mind, the factum of the gravity of the offence allegedly committed by the accused-petitioner herein, and, also her tainted antecedents besides, was also enjoined to bear in mind the factum, that in pursuance to the verdict of conviction being made, upon her, she became sentenced to undergo simple imprisonment extending only upto a period of one year. The imposition of the above term of substantive sentence of imprisonment, upon the petitioner, does not obviously underline the hardcore criminality of the petitioner, nor does underline, the factum, that there is every likelihood of hers fleeing from justice, unless evidence in respect thereof was called for, and, became adduced by the prosecution before the learned Sessions Judge concerned. However, the above evidence neither became elicited nor became adduced before him. Therefore, it was impermissible for the learned Sessions Judge, Fatehabad to *per-se* conclude, that, upon, the afore facility being granted there is every likelihood of hers fleeing from justice. It is also submitted at the bar, by the learned counsel for the petitioner, and, may also have been orally submitted before the learned Sessions Judge concerned, that the petitioner is well rooted in society, as, the petitioner's husband owns movable, and, immovable assets at district Fatehabad.

5. Bearing in mind the above, this Court, becomes constrained, to conclude, that despite the petitioner herein possessing a valid passport, and, also a visa from the embassy of USA located at Delhi, that hence it was not either apt nor appropriate for the learned Sessions Judge concerned, to decline the asked for relief. Therefore, the impugned order of 18.02.2022, as, carried in Annexure P-9, is quashed, and, set aside. However, for mitigating the anguish of the learned State counsel, that yet there is every likelihood of the petitioner fleeing from justice, this Court deems it fit, and, appropriate to impose certain conditions, upon her.

6. Therefore, the petition is allowed, subject to the petitioner furnishing a bank guarantee in the sum of Rs. 10 lacs drawn from the nationalized bank, and, in favour of the Chief Secretary, to the Government of Haryana, before the learned trial Magistrate concerned, rather within one week hereafter. Further subject to hers giving an undertaking, that in case she fails to return to India, on the scheduled date, thereupon, the bank guarantee shall become released by the learned Court of Magistrate, qua the Chief Secretary,, to the Government of Haryana. Further with her husband filing an affidavit, with a clear averment therein, that in case she does not return to India, thereupon his movable, and, immovable assets, shall become subjected to appropriate actions becoming drawn against them, in accordance with law.

7. Disposed of.

05.04.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:

Yes/No