

115

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

CRM-M-10143-2022

Date of decision : 14.03.2022

Amit Sureshmal Lodha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sumeet Goel, Sr. Advocate with
Mr. Samir Rathaur, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Vijay Dahiya, Advocate and
Mr. R.K. Doon, Advocate for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 24.02.2022 (Annexure P-1) passed by the Additional Chief Judicial Magistrate, Rewari and for allowing of the application (Annexure P-6) filed by the petitioner herein as prayed for in the application including extension of time of visit upto 30.04.2022.

Learned Senior counsel for the petitioner has submitted that the petitioner is facing trial in FIR No.63 dated 17.02.2020 registered under Sections 420/406/120-B/34 of the Indian Penal Code, 1860 at Police

Station Dharuhera, Rewari and in the said case, the petitioner has already been granted the concession of bail and earlier, he had sought permission to go abroad by way of filing an application and when the said application was rejected, the petitioner had approached this Court and vide judgment dated 09.11.2021 passed in CRM-M-3304-2021 (Annexure P-4), this Court had allowed the petition filed for setting aside the order rejecting the said application and, after imposing stringent conditions, had permitted the petitioner to go abroad for one month. It is further submitted that the petitioner, in pursuance of the said directions, had come back to India which fact clearly shows that the petitioner does not wish to abscond or evade the process of law and is duly facing trial.

Learned Senior Counsel for the petitioner has submitted that the present application (Annexure P-6) has been filed by the petitioner on the averments that the petitioner was the Director (suspended) of M/s Indsur Global Limited and the said company is facing proceedings initiated under Section 9 of the I&B Code, 2016 and the same is pending before the National Company Law Tribunal, Mumbai Bench. It is further the case of the petitioner that in case, a Resolution plan is not submitted or is not found to be viable then the company could be ordered to be liquidated by the Tribunal and the company has over 500 employees and thus, in such a situation, if the company is ordered to be liquidated, then the said persons would be rendered jobless. It is contended that the petitioner, who although is suspended from the Director's post at the present moment, but wishes for the said company to be revived and in order to seek investment,

he wishes to personally meet the overseas investors in USA/Europe so as to foster the confidence of the investors so that the Resolution Plan can move forward. It is thus contended that for the said purpose, the petitioner would have to travel to USA and other European countries and for the same, permission is required. It is also highlighted that the petitioner himself holds 93% of the shareholding of the company and is thus, also personally interested in revival of the same. It is argued that the said application filed by the petitioner has been illegally rejected vide order dated 24.02.2022 (Annexure P-1) and the same is in violation of the right of the petitioner to travel abroad. Reference has been made in the impugned order to the proceedings under Section 138 of the Negotiable Instruments Act, 1881, which had been taken into consideration by this Court, in the first round of litigation and the permission to travel abroad was granted after considering the same. The apprehension and allegations with respect to the petitioner fleeing from the country and not returning, were also considered in the impugned order and the fact that the petitioner has come back in accordance with the order dated 09.11.2021 would show that the said apprehension is baseless. With respect to the observation in the impugned order to the effect that that the prospective investors could be contacted through video conferencing, it is submitted that personal persuasion can only be done by meeting the investors in person and also, since financial aspects are to be discussed, the same cannot be discussed through video conferencing. It is further submitted that the petitioner has been granted bail and has been facing trial and the petitioner

has not been convicted and thus, in view of the settled law, he has every right to travel abroad. It is further contended that the conditions imposed by this Court in the first round of litigation were very stringent and thus, some relaxation is prayed for with respect to the imposition of the said conditions.

On the other hand, learned Counsel for the State alongwith Mr. Vijay Dahiya, Advocate and Mr. R.K. Doon, Advocate for the complainant have opposed the present petition. It has been submitted that earlier, permission had been granted since the petitioner wanted to visit USA for a family reunion and also on account of the medical difficulties which were being faced by the wife of the petitioner. It is further submitted that in the present petition, no details have been given with respect to the persons who are the proposed/prospective investors, as also the European countries to which the petitioner intends to travel to. It is argued that the petitioner does not own any property in India and thus, there is a chance that the petitioner, if granted the permission as has been prayed for, might not return and might abscond. It is also argued that the proceedings before the National Company Law Tribunal are now fixed for 29.03.2022 and in spite of the initial 8 COC meetings, the petitioner was not able to present the resolution plan, and it was only subsequently that the inclination to submit the resolution plan was presented and now the same is to be considered on 29.03.2022 and thus, the petitioner, at any rate, should not be permitted to travel abroad prior to 29.03.2022. It has also been contended that in case, the petitioner is to be granted the said liberty, then

the most stringent conditions, even more stringent than the conditions which were imposed in the earlier order dated 09.11.2021, be imposed in the present case.

Learned Senior Counsel for the petitioner in rebuttal has submitted that he has instructions that the petitioner would limit his visits to USA and United Kingdom, since on account of time constraints, it would not be possible for the petitioner to get visa with respect to all the European countries. It is further submitted that in the present case, next date before the trial Court is 23.05.2022 and the petitioner has prayed that he would visit USA/UK only upto 30.04.2022 and would positively return on the said date.

This Court has heard the learned counsel for the parties and perused the paper book.

It is not in dispute that earlier the application filed by the petitioner for going abroad was vehemently opposed by the counsel for the State as well as counsel for the complainant. The said prayer having been disallowed, the petitioner had filed a petition under Section 482 of Cr.P.C. for setting aside the order disallowing the said application of the petitioner to visit the United States of America and for the release of the passport of the petitioner. The same was allowed by this Court vide order dated 09.11.2021 passed in CRM-M-3304-2021 (Annexure P-4). The relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx

Learned Senior Counsel for the petitioner has submitted that in fact, in addition to the abovesaid reasons, there is an

additional reason for which it is necessary for the petitioner to go abroad. For the said purpose, reference has been made to the order dated 16.06.2021 passed by the Coordinate Bench of this Court. In the said order, it had been contended that for maintaining the validity of the green card, which has been issued in favour of the petitioner, the petitioner is required to visit America and failing the same, serious prejudice would be caused to the rights of the petitioner. Learned Senior Counsel for the petitioner has drawn the attention of this Court to Annexure P-6 which is the permanent resident card of the petitioner, specifically stating that the said card would expire on 06.04.2023 and also prima facie proving the petitioner to be a permanent resident of USA since 02.04.2011. Further reference has been made to Annexure P-14 wherein Chapter-3 of the US Citizenship and Immigration Services has been provided. Specific reference has been made to Clause 1 which appears at page 205 of CRM-31171-2021 and the relevant portion of the said clause has been reproduced hereinbelow:-

“1. Absence of More than 6 Months (but Less than 1 Year)

An absence of more than 6 months (more than 180 days) but less than 1 year (less than 365 days) during the period for which continuous residence is required (also called “the statutory period”) is presumed to break the continuity of such residence. This includes any absence that takes place during the statutory period before the applicant files the naturalization application and any absence between the filing of the application and the applicant’s admission to citizenship.”

On the basis of the said clause, it has been submitted

that the absence of more than 6 months but less than one year, during the period for which continuous residence is required, is presumed to be a break in the continuity of such residence. On this aspect, further reference has also been made to Parvez Noordin Lokhandwalla's case (Supra) in order to state that as per the US Immigration and Nationality Act, 1952, the person concerned has to return for a short period for revalidating the green card. Specific reference has been made to sub-Clause (ii) of Clause (C) of the conditions prescribed. Relevant portion of the said judgment of Hon'ble Supreme Court in the abovesaid case containing the said condition is reproduced hereinbelow: -

"On 26 June 2020, a Single Judge (Justice S. K. Shinde) expressed his inability to take up the IA for relaxation of the conditions attached to the grant of interim bail since the order dated 19 May 2020 had been passed by Justice A. S. Gadkari. The contention of the appellant, it may be noted, has been that under the conditions prescribed by the US Immigration and Nationality Act 1952, he has to return for a short period for revalidating the Green Card. Among them are the following:

"(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien-

- (i) has abandoned or relinquished that status,*
- (ii) has been absent from the United States for a continuous period in excess of 180 days,*
- (iii) has engaged in illegal activity after having departed the United States,*
- (iv) has departed from the United States while under*

legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in [section 1182\(a\)\(2\)](#) of this title, unless since such offense the alien has been granted relief under [section 1182\(h\)](#) or 1229b(a) of this title, or is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.”

On the basis of the abovementioned condition, it has been submitted that serious prejudice would be caused to the rights of the petitioner with respect to his permanent residency in the USA, if he is not granted the said permission.

Xxx xxx

xxx xxx

This Court has heard the learned counsel for the parties and has perused the record.

On the basis of the observations made in the impugned orders, the objections raised by the learned Senior Counsel for the complainant and learned counsel for the State and also the arguments raised by the learned Senior Counsel for the petitioner, the following issues/factors arise for consideration in the present case: -

- 1) Pendency of CRM-M-33202-2020 filed by the complainant-Joginder Singh against the order of the Sessions Judge granting anticipatory bail to the petitioner.*
- 2) Alleged non-cooperation of the petitioner in the investigation.*
- 3) Merits of the allegations made against the petitioner, moreso with respect to the placing of two purchase orders*

after the Board of Directors had been suspended vide order dated 24.09.2019 by the NCLT.

4) *Change of period with respect to which permission is sought for going abroad inasmuch as before the Chief Judicial Magistrate, period was stated to be from 18.12.2020 to 10.01.2021 and before the Sessions Court, it was stated to be from 09.01.2021 to 30.01.2021 and in the present petition, it is stated to be 30 days from the date of receiving the passport.*

5) *The question as to whether the Petitioner has a right to go abroad based on the pleas raised in the present petition.*

6) *In case, permission is to be granted, then the conditions, which are required to be imposed on the petitioner so that the petitioner would not flee from the course of justice.*

Xxx xxx

xxx xxx

ISSUE NO.4. Change of period with respect to which permission is sought for going abroad inasmuch as before the Chief Judicial Magistrate, period was stated to be from 18.12.2020 to 10.01.2021 and before the Sessions Court, it was stated to be from 09.01.2021 to 30.01.2021 and in the present petition, it is stated to be 30 days from the date of receiving the passport: -

In para 2 of the judgment passed in Parvez Noordin Lokhandwalla's case (Supra), the Hon'ble Supreme Court has categorically observed that though the time period for which the appellant therein had sought permission to travel abroad had lapsed, the cause survived and thus, in the said case, the appellant therein was permitted to travel abroad. Para 2 of the said judgment is reproduced hereinbelow:-

"2. The High Court declined to relax the conditions imposed by it for the grant of interim bail on the ground

*that an FIR has been registered against the appellant. **Though the period during which the appellant sought to travel abroad has lapsed, the cause survives.** The appeal raises interesting issues about the interface between the fundamental right to travel abroad and its curtailment under a judicial order as an incident to regulate conditions governing the grant of bail.”*

In the present case, the primary plea raised by the petitioner is to meet his wife and son who are residing in USA. The said cause was existing at the time of filing of the application at the first stage, at the time of arguments in the revision petition, as well as in the present petition. The cause thus, survives. Moreover, the petitioner cannot be deprived of his right to travel abroad and meet his family members, merely on account of the fact that the period for which he had initially sought the said permission, has lapsed. In the present case, the visit was not for a specific function/event, upon the finishing of which, the cause would cease to survive. For instance, in case a person has to travel abroad to attend the marriage of a near and dear one and the marriage has already been performed or to participate in a particular event and the said event has already taken place, then the cause, depending upon the facts and circumstances of the case, would have invariably lapsed. Thus, the said issue No.4 is also decided in favour of the petitioner.

ISSUE NO.5: The question as to whether the Petitioner has a right to go abroad based on the pleas raised in the present petition.

In the present case, the petitioner had initially made a prayer to go abroad primarily on the ground of conjugal union since he is an overseas Indian Citizen and his wife as well as his son are residing in Utah, a state in USA, at

the address 584E, Southfork Drive, Draper, UT-84020 and also on account of the wife of the petitioner having undergone an operation for removal of her appendix for which reliance has been placed upon the medical record (Annexure P-5) and subsequently, an additional factor, with respect to petitioner being a permanent resident of United States of America and the said residency having an expiration date of 06.04.2023 and in order to keep his rights of said residency alive, him being required to visit USA, has for the first time been raised in the present petition filed under Section 482 Cr.P.C.. For substantiating the prejudice that might be caused to the petitioner, reference has been made to Chapter-3 of the US Citizenship and Immigration Services (Annexure P-14) as well as the judgment of Hon'ble the Supreme Court in Parvez Noordin Lokhandwalla's case (Supra), relevant portion of which has been reproduced hereinabove.

Learned Senior Counsel for the complainant and learned counsel for the State have raised an objection to the raising of an additional plea by the Petitioner in the present petition filed under Section 482 Cr.P.C. This Court is of the view that the pleas which were raised before the Courts below were in fact, sufficient to entitle the petitioner to travel abroad inasmuch as it is the right of every individual to meet his wife and son, residing abroad and the said right could not be curtailed, on account of pendency of a criminal case against the individual, as the petitioner in this case. The said right, however, is to be regulated by imposing suitable conditions for securing his presence during the trial.

This Court, in the case of UtkarshPahwa Vs. Assistant Director (PMLA), Directorate of Enforcement, reported as 2019(1) Law Herald 870, had, after considering several judgments on the issue, observed that it can be safely

concluded that in normal circumstances, permission could be granted to the petitioner to travel abroad as the right to travel abroad is his fundamental right but the same is to be regulated by imposing conditions. The relevant portion of the said judgment is reproduced hereinbelow: -

“5 The law governing the question of grant of permission to the petitioner for travelling abroad during the pendency of the trial has been elaborately discussed by this Court in authority of Paramjit Kaur vs. State of Punjab's case (supra) in which reliance was placed on Srichand P. Hinduja Versus State through CBI, New Delhi 2002(3) RCR (Criminal) 186 (SC), Arun Kapoor vs. State of Haryana 2004(4) RCR (Criminal) 594 (P&H), Brij Bhushan Singal vs. Central Bureau of Investigation 1994 (3) RCR (Crl.) 498 (P&H), Anjal Kumar @ Angel Kumar vs. State of Punjab 2010(1) RCR (Criminal) 201 and Naginder Singh Rana vs. State of Punjab 2004(3) RCR (Criminal) 912 and on the basis of the said authoritative pronouncements of the Hon'ble Apex Court and this Court, it can be safely concluded that in normal circumstances, permission can be granted to the petitioner to travel abroad being his fundamental right to travel abroad, but the conditions are to be imposed for regulating and securing his presence during the trial.

6. Keeping in view the said ratio of the aforesaid authority of Paramjit Kaur vs. State of Punjab's case (supra), which is applicable to the facts of the present case, in which also the permission has been sought by the petitioner to travel abroad for a short duration for attending the marriage ceremony of his childhood friends and the supporting documents have also been placed on record, I grant permission to petitioner Utkarsh Pahwa to

travel abroad for attending the marriage ceremony of his childhood friends Jay at Bangkok during the period from 25.1.2019 to 28.1.2019 and marriage ceremony of Medha Alhuwalia at Turkey from 08.2.2019 to 09.2.2019 subject to following conditions:-

- (i) that the petitioner shall not seek extension of the period of his stay abroad at any ground whatsoever except in case of medical emergency and shall return to India from 1st trip by 29.1.2019 and by 10.2.2019 from the second trip.*
- (ii) that the petitioner shall not visit any other country except Thailand and Turkey.*
- (iii) that the petitioner shall not in any manner tamper with the evidence of the prosecution;*
- (iv) that the petitioner shall submit copy of his passport before visit and on return, within one week shall produce his passport in the court for placing on record its copy in respect of his said visit record;*
- (v) that the petitioner shall execute FDR/bank guarantee to the tune of Rs. 40 Lacs. This amount shall be returned to the petitioner when he will come back from his trips.***

7. Resultantly, petition is allowed in the above terms and the impugned order dated 2.1.2019 is set aside.

8. Since the main case has been decided, the pending CM, if any, also stands disposed of.”

*The Hon’ble Supreme Court of India in judgment titled **Satish Chandra Verma Vs. Union of India and others**, reported as **2019(2) SCT 741**, has also held that the right to travel abroad is an important basic human right and the said right also extends to private life- marriage, family and friendship. Relevant portion of the said judgment is*

reproduced hereinbelow: -

“5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 which are as follows:

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

Although, in the said case, there were no criminal proceedings pending against the appellant therein and the denial to go abroad was on account of lack of vigilance credence but the aforesaid observation of the Hon’ble Supreme Court is very relevant as it highlighted the right to freedom to travel. In the present case, although, the pleas raised by the petitioner before the Courts below, have been considered to be sufficient by this Court so as to entitle the petitioner to travel abroad, but it is always open to this Court while exercising its powers under Section 482 of Cr.P.C. to consider any additional/ancillary plea, and thus, in this case, the same may be considered so as to grant permission to the petitioner to travel abroad. The additional plea raised with respect to the petitioner being a permanent resident of USA since 02.04.2011 which is to expire on 06.04.2023, as is apparent from Annexure P-6, as also on the basis of the

relevant Chapter of the US Citizenship and Immigration Services, as also the judgment of Hon'ble the Supreme Court in Parvez Noordin Lokhandwalla's case (Supra), goes to show that non-grant of the said permission to the petitioner to go abroad could cause prejudice to the right of the petitioner with respect to his permanent residency. Thus, the said issue is also decided in favour of the petitioner.

ISSUE NO.6: In case, permission is to be granted, then the conditions, which are required to be imposed on the petitioner so that the petitioner should not flee from the course of justice.

Xxx xxx

xxx xxx

It has been further submitted that the Hon'ble Supreme Court in Srichand P. Hinduja's case (Supra), had imposed conditions to the effect that the petitioners therein were directed to execute a bond for a sum of Rs.15 crores each with a bank guarantee for the like amount to the satisfaction of the Special Judge in addition to the other conditions. Relevant portion of para 3 and para 7 of the said judgment are reproduced hereinbelow: -

“3. For this purpose it was pointed out to the High Court, that if the accused are permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return back to India to face the trial. It is also pointed out that the appellants were Indian Nationals at the time of registration of the FIR and thereafter they have acquired British and Swiss Nationalities.

Xxx xxx xxx

7. Considering the facts and circumstances, for the time being as an interim measure, the appellants, namely, Mr.

Srichand P. Hinduja (in Crl. Appeal No..... of 2001 @ SLP (Crl) 1828/2001) and Mr. Gopichand P. Hinduja (in Crl. Appeal No..... of 2001 @ SLP (Crl) No. 1829 of 2001) are permitted to go abroad on the following conditions:

- 1. Both the appellants would execute a bond for a sum of Rs. 15 crores (rupees fifteen crores) each with a bank guarantee for the like amount to the satisfaction of the Special Judge;*
- 2. On their behalf counsel will remain present on the date of posting of the matter and would not ask for adjournment on the ground that the appellants are not present in India.*
- 3. The appellants will remain present before the Special Judge as and when their presence is needed in the case.*
- 4. If there is any violation of the aforesaid conditions, it would be open to the Special Judge to pass appropriate orders for cancellation of bail of the appellants.*
- 8. In any case, this order would not adversely affect further proceedings in the trial Court and the Court will deal with the matter without being influenced in any way by this order or any observations made in the order passed by the High Court.*
- 9. This interim measure is upto 20th August, 2001 and the matter be listed before this Court on 7th August, 2001 for further hearing and directions.*

Ordered accordingly.”

On the other hand, learned Senior Counsel for the petitioner has relied upon judgment of the Coordinate Bench of this Court in Paramjit Kaur’s case (Supra), wherein the petitioner was permitted to go abroad on the execution of only

one personal bond in a sum of Rs.5,00,000/- with an undertaking that she would report back on or before 15.02.2019. Further, reference has also been made to Surender Singla's case (Supra) to state that in the said case, permission was granted subject to deposit of only Rs.2,00,000/- with the trial Court.

This Court has considered the arguments of the counsel for the parties on the present issue, which is of utmost importance. The amount due to the complainant is stated to be Rs.1,85,50,286/-. This Court is aware of the fact that it is a debatable issue as to whether the petitioner would be personally liable to pay the said amount or not or if it is the company in question which has to pay the said amount. There are 41 cases under Section 138 of the Act of 1881 stated to be pending against the petitioner and the company M/s Indsur Global Limited and the amount involved in the same is stated to be Rs.25 crores by the learned Senior Counsel for the complainant. Although, learned Senior Counsel for the complainant has not been able to produce the complaints filed under Section 138 of the Act of 1881, which would have enabled this Court to come to a prima facie conclusion as to what is the total amount due and to what extent is the liability of the petitioner, however, on the other hand, even the learned Senior Counsel for the petitioner has not produced anything to affirmatively controvert the fact that the petitioner is an accused in the said 41 cases. The company in which the petitioner was on the Board of Directors, can be seen to be accused No.1 in the said complaints under Section 138 of the Act of 1881. There are other parties who have been made accused in the said cases, as is apparent from the title of the cases. In case, the petitioner is not involved in the said cases, even then it was incumbent upon the petitioner to produce the

documents substantiating the same. Learned Senior Counsel for the complainant has referred to the order dated 28.07.2021 vide which non-bailable warrants had been issued to accused Nos.2 to 4 in complaint No.3 of 2018 titled as TCI Fright Vs. Indsur Global (Annexure C-2), to show that there are three more accused in Complaint No.3 of 2018, in addition to the Company in question, which are stated to be the petitioner, his mother and his father. While rebutting the said aspect, the Learned Senior Counsel for the Petitioner has referred to the order dated 13.10.2021 (which has been reproduced hereinabove), to state that the matter has been compromised but has not disputed the fact that the Petitioner was one of the three accused in the said complaint. Thus, while imposing conditions, this Court cannot be oblivious of the fact that there are 41 cases under Section 138 of the Act of 1881, as has been detailed hereinabove. In Srichand P. Hinduja's case (Supra), a bond for a sum of Rs.15 crores each with a bank guarantee for the like amount to the satisfaction of the Special Judge was sought from the appellants who were granted the permission to go abroad on the said conditions. The said conditions were imposed with respect to a case in which the dispute was stated to be involving an amount of Rs.1437 crores and the alleged kickback was of Rs.64 crores. Thus, the said conditions cannot ipso facto be applied to the present case. Reliance placed by the learned Senior counsel for the petitioner on Paramjit Kaur's case (Supra) to contend that only a personal bond amounting to Rs.5,00,000/- was sought from the Petitioner in the said case, does not further the case of the petitioner inasmuch as in the said case, there was no argument raised that the petitioner therein had several cases against her nor any outstanding amount had been stated with respect to which fraud or

*cheating at the hands of the petitioner therein could be alleged, nor it had been stated that the petitioner therein did not have any immovable property in India. In fact, in the said case, the petitioner therein had earlier gone to Canada and had returned to India in accordance with the permission granted and the conditions imposed and even the proceedings in the trial Court as well as in the civil litigation had been stayed. In fact, in the case of Brij Bhushan Singal, which was considered in the said case, the security sought from the accused therein was for a sum of Rs.25 lacs. Even in Surender Singla's case (Supra), relied upon by the learned Senior Counsel for the petitioner, neither there were any details of the amount with respect to which the Petitioner had allegedly committed cheating or fraud, nor there were any details of any case against the petitioner, rather it had come out that the petitioner and his family members had property in India and that earlier when the trial Court had granted him the permission to travel abroad, he had returned to India within the stipulated time. In the judgment passed by the Coordinate Bench of this Court in Utkarsh Pahwa's case (Supra), the relevant portion of which has been reproduced hereinabove, the petitioner therein had been directed to execute FDR/bank guarantee to the tune of Rs.40 lacs even in a case where it was argued by the petitioner that he had sufficient liquid assets and immovable property in India and although, there were no serious objections raised with respect to the financial status of the petitioner therein. Further, another Coordinate Bench of this Court in **Paramjit Singh and others Vs. State of Punjab, CRM-3400-2011, decided on 23.02.2011** had granted permission to the petitioner therein to go abroad while imposing conditions including the condition/undertaking to the effect that in the event of failure*

to return from abroad, he would have no objection if the land measuring 64 kanals 9 marlas, which was owned by the petitioner therein, would be attached and disposed of in accordance with law. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxxxxx

Learned counsel for the appellant-applicant has also stated that the land measuring 64 Kanals which is owned by the appellant-applicant is of substantial value and he is ready to keep the same as security for his return from England after a period of two months.

Xxx xxx

*(i) That the appellant-applicant shall execute a personal bond and surety in the sum of Rs.5 lacs to the satisfaction of the learned Chief Judicial Magistrate, Jalandhar with an undertaking to appear in Court soon after the expiry of two months from the date he shall leave the country. (ii) The appellant-applicant shall bind himself that he shall return from abroad and appear before the learned Chief Judicial Magistrate, Jalandhar. The appellant-applicant shall furnish one surety in the sum of Rs.5 lacs to the satisfaction of the learned Chief Judicial Magistrate, Jalandhar for his visit abroad and then to appear before the said Court. (iii) **The appellant-applicant shall file an undertaking that in the event of his failure to return from abroad, he would have no objection if the land measuring 64 Kanals 9 Marlas as mentioned in the Jambandi for the year 2004-05 (Annexure P5) is attached and disposed of in accordance with law. On return from abroad, the conditions as imposed upon the appellant-applicant for going abroad will become inoperative and the appellant-applicant shall continue to***

be bound by the old bonds and sureties that have been furnished by him while being released on bail on 30.11.2010.”

*In another case, titled **Dr. Mangal Singh Sandhu Vs. State of Punjab**, reported as **2018(2) Law Herald 1077**, the Coordinate Bench of this Court, while allowing the petitioner to go abroad, directed the petitioner therein to execute a personal bond and surety in the sum of Rs.50 lacs each to the satisfaction of the trial Court. Relevant portion of the said order is reproduced hereinbelow: -*

“16. In the totality of the circumstances, prayer of the petitioner seeking permission to proceed to Canada is accepted to the extent of according permission to proceed abroad upto 28.04.2018.

*17. **Petitioner shall execute a personal bond and a surety in the sum of Rs.50 lacs each to the satisfaction of the trial Court, with an undertaking to appear immediately after the expiry of the period that he has been permitted to travel abroad i.e. after 28.04.2018.***

18. Pursuant to the view taken by this Court, the order dated 01.02.2018 passed by the trial Court at Annexure P-8 is set aside.”

This Court is required to draw a balance between the right of the petitioner to travel abroad and also right of the prosecution to duly prosecute the petitioner so as to prevent him from evading the trial. From perusal of the various judgments passed by the Hon’ble Supreme Court of India as well as this Court, it is clear that paramount consideration is given to the conditions imposed upon the persons who have been granted the permission to go abroad, so as to ensure that they do not flee from justice.

In the present case, keeping in view the facts and

circumstances, moreso the fact that the petitioner does not own any property in his own name in India and the wife and son of the petitioner also reside abroad and also keeping in view the offer made by learned Senior Counsel for the petitioner so as to prove his bonafide, the petitioner is allowed to go abroad for a period of one month subject to the following conditions: -

- 1) The petitioner shall furnish two sureties in the sum of Rs.40 lacs each to the satisfaction of the concerned trial Court/Duty Magistrate for ensuring his return from abroad and appearance before the Court.*
- 2) After the acceptance of the surety, the petitioner would indicate the 30 day period for which the petitioner wishes to go abroad, to the concerned trial Court/Duty Magistrate. The said period of one month should fall within the period of two months starting from the date of present order. The concerned trial Court/Duty Magistrate shall permit the petitioner to go abroad for a period of one month as indicated by the petitioner in case, the said period of one month is falling within two months from the date of this order and in case, the sureties so given are to the satisfaction of the concerned Magistrate/trial Court and in case, the petitioner also complies with the other conditions as mentioned in the present order.*
- 3) The petitioner shall give an undertaking that the petitioner shall return from abroad on the date so specified and appear before the concerned trial Court/Duty Magistrate for the purpose of trial and would not seek any extension with respect to the same.*
- 4) Upon the acceptance of the sureties and also upon giving the undertaking, as directed aforesaid and after specifying the date of return in the aforesaid manner, the*

passport of the petitioner shall be released to him and he would be permitted to go abroad.

5) During the period of the petitioner being abroad, the personal appearance of the petitioner shall be exempted and the petitioner shall be permitted to appear through his counsel. However, the petitioner would not be entitled to raise the objection that the evidence had been led in his absence.

6) The petitioner shall not dispute his identity.

7) The petitioner shall not in any manner tamper with the evidence of the prosecution.

8) The petitioner shall not visit any other country except USA, during the said period for which the permission to travel abroad has been granted by this Court.

9) The petitioner on returning, within five days from the date of return, shall produce his passport before the concerned trial Court/Duty Magistrate.

10) On return, the petitioner shall continue to be bound by the old conditions which were imposed while releasing the petitioner on bail and the conditions imposed for his going abroad, as have been detailed in this order, shall cease to operate.

Accordingly, Issue No. 6 stands decided, and the present petition is disposed of in the abovesaid terms.

All the pending miscellaneous applications, if any, shall also stand disposed of in view of the abovesaid judgment.”

A perusal of the order reproduced hereinabove would show that several issues were raised by both the parties which were taken into consideration. The issue as to whether the petitioner had the right to travel abroad on the pleas raised therein and in case, the petitioner was to be granted the said permission, then the conditions which would have to be

imposed, as well as the issue regarding the change of period with respect to which permission to travel abroad had been sought, were taken into consideration. The issue with respect to the said change of period and also the issue pertaining to the petitioner's fundamental right to travel abroad, were decided in favour of the present petitioner. Various judgments of the Hon'ble Supreme Court as well as various other Courts were also duly considered. While deciding the issue with respect to the conditions required to be imposed on the petitioner, the fact that there were cases under the Negotiable Instruments Act, 1881 against the petitioner, apart from other issues, was considered and after considering the entire law on the same, the conditions, as have been reproduced hereinabove, were imposed. It is admitted case of the parties that the said order has not been challenged. It is further apparent from the record that in pursuance of the said order, the petitioner has come back to India within the time period stipulated in the said order. Reference in this respect has also been made to the zimni order dated 10.01.2022 passed by the ACJM, Rewari. Relevant portion is reproduced hereinbelow:-

“Present: Sh. Parveen Kumar, APP for the State.

***Accused Amit Suresh Mal Lodha in person**
with Sh. Vivek Tanwar, Advocate.*

*Accused-Suresh Mal Lodha & Indu Lodha are
not present represented by Sh. Vivek Tanwar,
Advocate.*

*An application for exemption from personal
appearance on behalf of accused-Suresh Mal Lodha &
Indu Lodha filed by their counsel. Heard. In view of the
reasons mentioned in the application, it is allowed for*

today only.

*An application for taking on record the passport of the applicant-Amit Suresh Mal Lodha moved by ld. counsel for accused. **Passport No.N2419844 of Amit Suresh Mal Lodha taken on the case file.** The Ahlmad is directed to keep the passport in the safe cover and attach with the file. Now, come up on **23.05.2022** for presence of accused persons and for arguments on charge.*

January 10th, 2022

Sd/- (Vineet Sapra)

ACJM,Rewari.

UID No.: HR0267”

A perusal of the above zimni order would show that the petitioner had appeared in person with the counsel and the case is now, fixed for 23.05.2022. The present application (Annexure P-6) has been moved by the petitioner on the averments that he is the suspended Director of the company M/s Indsur Global Limited which is facing proceedings under Section 9 of the I&B Code, 2016 which is now listed before the National Company Law Tribunal, Mumbai Bench for 29.03.2022. The case of the petitioner is that in the said proceedings, in case, the resolution plan is not submitted or if the submitted plan isn't viable/successful, then the company would go into liquidation and the 500 employees of the company would be rendered jobless and thus, other than the job of the 500 employees at stake, even the personal interest of the petitioner would stand jeopardized, inasmuch as he has 93% of the shareholdings in the said company. It is further his case that in order to revive the said company, he wants to personally meet the prospective investors, who are all based in USA/European countries, and in order to gain their confidence and to

convince them to support the resolution plan, he would need to meet them personally by going abroad. The fact that the petitioner is vested with the fundamental right to travel abroad cannot possibly be disputed in view of the various judgments of the Hon'ble Supreme Court and various other Courts, on the said aspect as well as in view of the observations made in this respect vide order dated 09.11.2021 passed in CRM-M-3304-2021 which has attained finality.

The application in question has been dismissed vide impugned order dated 24.02.2022 primarily on the ground that there is no documentary proof to show as to what is the value of the assets of the company and on the ground there are proceedings under Section 138 of the Act of 1881 pending against the petitioner and on account of the apprehension raised by the State as well as the complainant that the petitioner if granted the permission to travel abroad, he would flee from the country and would not return back. In the impugned order, it has also been observed that the application deserves to be rejected on the grounds that the allegations levelled against the petitioner are grave and serious and that the prospective investors could also be contacted by way of video conferencing and further, that the details of prospective investors have not even been provided in the petition.

This Court has considered the abovesaid reasons given in the impugned order and has also considered the entire background of the case and has also perused the judgment dated 09.11.2021 passed by this Court, and is of the opinion that the said impugned order deserves to be set aside.

It cannot be disputed that the petitioner has a fundamental right to travel abroad and the findings to this effect, recorded in the judgment dated 09.11.2021, which is an order passed inter se parties in the present case, would bring about that point. It is the admitted case of the parties that the said order has not been challenged and has thus, attained finality.

The apprehension of the respondents to the effect that the petitioner would not come back and would abscond is without any basis inasmuch as, when on the previous occasion, permission was granted to the petitioner to go abroad vide order dated 09.11.2021, the petitioner has duly returned in compliance with the directions of the said order and has been appearing before the trial Court. The said fact is apparent from the zimni order dated 10.01.2022 which has been reproduced hereinabove.

In the present case, the petitioner is the suspended Director of the company in question and is also stated to have 93% of the share holdings in the said company and thus, it cannot be stated that he has no concern with the company and no interest in the revival of the company. In fact, it is the case of the complainant as well, that after 8 COC meetings, the inclination to submit the resolution plan had been presented and now the proceedings are pending before the National Company Law Tribunal for 29.03.2022 for considering the same. In case, the petitioner is able to convince the prospective investors, who are stated to be based in USA/UK, then the same could help in reviving the company and the employment of several persons who are stated to be the employees of the company could

be saved. The observation in the impugned order to the effect that the prospective investors could be contacted by way of video conferencing also, cannot be sustained inasmuch as this Court feels that the plea of the petitioner that it is pertinent to personally meet the said investors so as to convince them to make the requisite investments and also to work out the various financial aspects, deserves to be accepted.

With respect to the argument of the counsel for the respondents that it has not been specified in the petition as to which country in Europe the petitioner wishes to visit, learned Senior counsel for the petitioner has very fairly stated that on account of time constraint, the petitioner would restrict his prayer to be granted the permission to travel USA and United Kingdom. In rebuttal to the argument advanced on behalf of the State and complainant to the effect that no prospective investors have been specified in the petition, it is submitted by the learned Senior Counsel for the petitioner that there are several investors who are interested in investing in the resolution plan and in case, the petitioner gets the permission to travel abroad and meet them, it could then be stated with certainty as to who all would ultimately invest in the said plan and at any rate, he does not wish to disclose the name of the prospective investors as there has been a very prolonged litigation between the petitioner and the complainant party and there is an apprehension that the complainant party might come in the way of the petitioner in getting investors. It is not in dispute that the case before the trial Court is now fixed for 23.05.2022 and thus, in case, the prayer of the petitioner to travel abroad upto 30.04.2022

is allowed, then the same would also not delay the trial in any way. Thus, this Court is of the view that the present petition deserves to be allowed.

Although, it has been prayed by the learned Senior Counsel for the petitioner that the conditions imposed vide order dated 09.11.2021, be relaxed while granting the permission to travel abroad and contrary arguments in the same respect have been raised by the State Counsel as well as counsel for the complainant, but this Court is of the opinion that in the earlier round of litigation, after considering the entire aspect including the financial status of the petitioner, the monetary dispute involved and also the cases pending against the petitioner, the conditions as have been detailed in the order dated 09.11.2021 (and have been reproduced hereinabove) were imposed on the petitioner.

This Court is of the view that the same conditions should be imposed while allowing the petitioner to go abroad to USA/UK upto 30.04.2022.

Thus, keeping in view the abovesaid facts and circumstances, the present petition is allowed and impugned order dated 24.02.2022 (Annexure P-1) is set aside and the petitioner is allowed to go abroad upto 30.04.2022, subject to following conditions:-

- 1) The petitioner shall furnish two sureties in the sum of Rs.40 lacs each to the satisfaction of the concerned trial Court/Duty Magistrate for ensuring his return from abroad and appearance before the Court.
- 2) After the acceptance of the surety, the petitioner would be permitted to go abroad upto 03.04.2022 by the concerned trial Court/Duty

Magistrate subject to the condition that the petitioner would have to come back to India on 30.04.2022. The concerned trial Court/Duty Magistrate shall permit the petitioner to go abroad for the said period in case, the sureties so given are to the satisfaction of the concerned Magistrate/trial Court and in case, the petitioner also complies with the other conditions as mentioned in the present order.

- 3) The petitioner shall give an undertaking that the petitioner shall return from abroad on the date so specified and appear before the concerned trial Court/Duty Magistrate for the purpose of trial and would not seek any extension with respect to the same.
- 4) Upon the acceptance of the sureties and also upon giving the undertaking, as directed aforesaid, the passport of the petitioner shall be released to him and he would be permitted to go abroad.
- 5) During the period of the petitioner being abroad, the personal appearance of the petitioner shall be exempted and the petitioner shall be permitted to appear through his counsel. However, the petitioner would not be entitled to raise the objection that the evidence had been led in his absence.
- 6) The petitioner shall not dispute his identity.
- 7) The petitioner shall not in any manner tamper with the evidence of the prosecution.
- 8) The petitioner shall not visit any other country except USA/UK, during the said period for which the permission to travel abroad has been granted by this Court.

- 9) The petitioner on returning, within five days from the date of return, shall produce his passport before the concerned trial Court/Duty Magistrate.
- 10) On return, the petitioner shall continue to be bound by the old conditions which were imposed while releasing the petitioner on bail and the conditions imposed for his going abroad, as have been detailed in this order, shall cease to operate.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

14.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No