

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

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**CRM-M-22368-2022 (O&M)
Date of decision: 26.05.2022**

BALBIR SINGH DHOL

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. TPS Tung, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

Instant petition has been filed under Section 482 of the Code of Criminal Procedure for seeking quashing of the order dated 17.05.2022 (Annexure P-3) passed by Judicial Magistrate First Class, SAS Nagar Mohali in case titled as 'State versus Prince and others' vide which application dated 09.05.2022 filed by the petitioner seeking permission to go abroad for a period of 01 month commencing from 30.05.2022 till 30.06.2022 has been dismissed. A further prayer has been sought to grant permission to the petitioner to go abroad for the said period.

Learned counsel for the petitioner argues that the petitioner is a retired officer from Punjab Civil Services cadre and had also worked as a Chairman of Punjab School Education Board. He contends that during his service, the petitioner remained posted as Estate Officer in GMADA, SAS Nagar, Mohali. On the basis of a complaint sent by GMADA, a case FIR No.72 dated 22.07.2013 was registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian

Penal Code, 1860 at Police Station Phase-VIII, SAS Nagar Mohali against one Prince son of Radhe Shyam. Learned counsel for the petitioner contends that upon conclusion of the investigation, final report under Section 173 CrPC was filed wherein the petitioner was not nominated as an accused. It is argued that the petitioner was eventually summoned as an additional accused on an application moved under Section 319 CrPC. The petitioner appeared before the trial Court on 30.01.2019 and has since then been regularly appearing before the trial Court.

Learned counsel for the petitioner points out that his daughter is a permanent resident of England (London) and she is facing a family dispute for which he is required to go to England for a period of 01 month and an application dated 09.05.2022 in this regard was filed before the Illaqa Magistrate. The said application was however declined by the Illaqa Magistrate vide impugned order by noticing that the case is at an advanced stage and the presence of the petitioner would be required in case charge is ordered to be framed against him. Learned counsel contends that the said observation is misconceived inasmuch as the case presently is fixed before the trial Court for adjudication of an application submitted by the petitioner seeking discharge of the petitioner in the said case. The arguments have been part-heard and are yet to be completed and the question of framing of charge shall arrive thereafter. He further argues that the matter is now fixed before the trial Court for conclusion of the arguments on the said application for 01.06.2022 and in addition to the above, a revision petition against the order of summoning the petitioner under Section 319 CrPC is also pending before Additional Sessions Judge for 30.05.2022. Learned counsel contends that even if the arguments are concluded on the said date, there would be some time required for the trial Court to pass an order on the said application and that the Criminal

Courts shall close for summer vacations from 13.06.2022. It is contended that the petitioner shall be back before the time the Criminal Courts reopen. Learned counsel contends that the petitioner is ready and willing to furnish heavy surety or any other condition as may be so imposed in order to ensure his presence.

Reply by way of an affidavit of Sukhjit Singh Virk, PPS, Deputy Superintendent of Police (City-II) District SAS Nagar has been filed on behalf of the respondent-State. The relevant extract of the same is reproduced hereinbelow:-

8. *That it is respectfully submitted that in the meantime, the petitioner also filed an application for discharging him in the present case, which is pending consideration before the Ld. Court and is now fixed for hearing on 01/06/2022.*
9. *(...)*
10. *That it is respectfully submitted that being aggrieved with the order dated 17/05/2022 (Annexure P-3) passed by the Ld. JMIC, SAS Nagar, the petitioner has now approached this Hon'ble Court for quashing of the order dated 17/05/2022 (Annexure P-3) and seeking permission to go abroad for a period of one month from 30/05/2022 to 30/06/2022 on flimsy grounds besides raising disputed questions of facts, which need not be entertained by this Hon'ble Court at this stage. It is submitted that the Ld. Court below has rightly observed that the petitioner has been delaying the framing of charges in order to delay the trial of the present case/FIR and in case, the petitioner is permitted to travel abroad at this stage, there is every likelihood that he will not return back to face the trial and abscond. It is further relevant to mention here that as per the observations of the Ld. Court that the case is fixed for framing of charges on 01/06/2022 and therefore his appearance would be required in case charge is ordered to be framed against him.*

It is evident and not in dispute that the case is still fixed for arguments on the application seeking discharge of the petitioner. Merely because an accused is taking recourse to the constitutional remedies available to him in accordance with law, he cannot be accused of causing delay in the proceedings. The principles of fairness mandate that all due opportunities must be extended to either of the parties to prove their case and a mere taking recourse to such remedies available to a person in accordance with law, would not ordinarily be interpreted or construed as an attempt to delay the proceedings before the trial Court.

The other apprehension expressed by the respondents is that there is a possibility of the petitioner not coming back to the country after going abroad, however, learned counsel for the petitioner has already undertaken to furnish a heavy surety to ensure his presence. However, it does not appear to be based upon any valid or germane basis for supplementing the aforesaid apprehension and it is also not the basis of the impugned order. In any case, the said aspect can be taken care of by imposing conditions that would be sufficient to dispel the apprehension so expressed. The reason propelling the petitioner is the family dispute that his daughter is going through. It would rather be a primary concern for the petitioner, as a father, to be close with his daughter in this hour of her need. Initiation of a criminal proceeding does not *ipso facto* amount to denial of all the fundamental rights and freedoms guaranteed under the Constitution of India. Unsubstantial apprehensions founded on perceptions do not subscribe to the constitutional objectives. Denial of any such request without any real and tangible basis would rather be denial of the right to an accused to pursue his social and family obligations that are inherently embodied in Article 21 of the Constitution of India.

In view thereof, the present petition is allowed and the order dated

17.05.2022 (Annexure P-3) passed by the Judicial Magistrate First Class, SAS Nagar Mohali is set aside.

The petitioner is permitted to travel abroad from 30.05.2022 till 30.06.2022. However, he shall furnish complete details of the contact and place where he is likely to reside during his foreign visit before the Illaqa Magistrate/Duty Magistrate and shall report on or before 10.07.2022 to the concerned Police Station of his return to India. The petitioner shall furnish heavy surety to the satisfaction of the Illaqa Magistrate/Duty Magistrate, concerned.

A copy of this order be handed over the counsel for the petitioner under the signatures of the Bench Secretary.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

May 26, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>