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

(Sr. No. 277) **CRM-M No. 24287 of 2022**

Date of decision : 27.07.2022

Neha Bambah

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Manish Puri, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

Mr. Yogesh Goel, Advocate for respondent No.2 - along with respondent No.2.

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DEEPAK SIBAL, J. (*Oral*)

Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of order dated 26.05.2022 passed by the Additional Chief Judicial Magistrate, Pathankot (for short – the Magistrate) through which respondent No.2, who is an accused in FIR No.100 dated 27.07.2021 registered under Sections 498-A and 406 IPC at Police Station Division No.1, Pathankot, has been granted permission to go to Canada for a period of 04 weeks.

The petitioner and respondent No.2 got married on 09.11.2019. Thereafter their relationship got strained leading to the filing of a complaint by the petitioner with the police on the basis whereof the aforesaid FIR was registered against respondent No.2. Apprehending arrest, respondent No.2 sought anticipatory bail from the Sessions Court at Pathankot which was declined. Respondent No.2 then knocked the doors of this Court for the relief which had been declined by the Sessions Court at Pathankot. Such petition of his was accepted and on 08.03.2022 this Court granted him anticipatory bail.

Investigations were conducted by the investigating agency in the aforesaid FIR after completion of which a report under Section 173 Cr.P.C. was filed before the competent Court seeking therein to prosecute respondent No.2 under Sections 406 and 498-A IPC. At that stage, respondent No.2 filed an application before the Magistrate seeking permission to travel to Canada for a period of 04 weeks. In his application respondent No.2 stated that he was working in Adobe Inc. at Noida; he had been granted permanent residency status to immigrate to Canada; he had also been granted a visa to travel to Canada which was valid till November, 2022; for confirmation of his permanent residency status at a later stage he was presently required to make a soft landing in Canada for a period of 04 weeks and that in case he did not make such soft landing the chances of confirmation of his permanent residency status would get seriously jeopardized.

The Magistrate permitted respondent No.2 to travel to Canada for 04 weeks. However, the same was subject to his furnishing a bond in the shape of a FDR for an amount of Rs.4 lakhs. Such order of the Magistrate is under challenge through the present proceedings.

Learned counsel for the petitioner submitted that respondent No.2 is serving as a Senior Software Engineer in Adobe Inc.; he is receiving a monthly salary of Rs.4 lakhs approximately and therefore the grant of permission by the Magistrate to respondent No.2 to travel to Canada, while he is on bail, on furnishing of a FDR for only Rs.4 lakhs was too meagre to ensure respondent No.2's return back to India to face trial.

Per contra learned counsel for respondent No.2 submits that in case respondent No.2 had to flee from his trial he in the first instance would have not even sought permission from the Magistrate as he already had the necessary documentation including the visa to travel to Canada; respondent No.2 is ready to furnish additional security in the form of original property papers of a shop bearing Plot No.P02900100702 (for short – the property) which is owned and possessed by his mother; such 'property' is worth Rs.12.50 lakhs (approx); to show their *bona fides* his mother and respondent No.2 are jointly ready and willing to furnish an undertaking that in case respondent No.2 fails to make himself available in his trial the 'property' be forfeited; in case respondent No.2 is not granted the sought permission not only his chances to attain permanent residency in Canada are seriously hampered, it shall also effect his career prospects affecting his entire future.

In ***Parvez Noordin Lokhandwalla Vs. State of Maharashtra and another (2020) 10 Supreme Court Cases 77*** the Supreme Court while permitting the under-trial petitioner therein to travel to the USA observed as follows : -

> *"**22.** xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx We are called upon to decide only whether the appellant should be permitted to travel to the US for eight weeks. In evaluating this issue, we must have regard to the nature of the allegations, the conduct of the appellant and above all, the need to ensure that he*

does not pose a risk of evading the prosecution. The details which have been furnished to the Court by the appellant, indicate that he has regularly travelled between the US and India on as many as sixteen occasions between 2015 and 2020. He has maintained a close contact with India. The view of the High Court that he has no contact with India is contrary to the material on record. The lodging of an FIR should not in the facts of the present case be a bar on the travel of the appellant to the US for eight weeks to attend to the business of revalidating his Green Card. The conditions which a court imposes for the grant of bail – in this case temporary bail – have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.

***23**. xx xx xx xx xx xx xx xx xx xx*

***24.** xx xx xx xx xx xx xx xx xx xx*

***25.** Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of* *litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel to the US for a period of eight weeks."*

In ***Tarun Trikha Vs. State of West Bengal 2015 SCC OnLine SC 1879*** the Supreme Court permitted the under-trial petitioner therein to travel abroad in connection with his employment and the relevant observations of the Supreme Court in this regard are as follows :-

"***2.*** *It is further stated that he is working as a consultant on the rolls of PT Pacific Royale Airways, which has the headquarter at Indonesia and for that purpose, he has to frequently travel to Indonesia. He had sought permission for travelling to Indonesia, which has been rejected by the High Court vide impugned orders dated 27.03.2015, affirming the order of the trial court.*

3*. Since the trial of the cases in the aforesaid FIRs may take some time, that should not be a reason not to allow the petitioner to travel in connection with his employment, as mentioned above. At the same time, it is also to be assured that he returns to India after finishing his work in Indonesia, takes part in the said criminal proceedings lodged against him and do not seek unnecessary adjournments.*

4. *Since the cases are under Sections 420 and 409 IPC and the total amount involved is around Rs. 40 Lakhs, we are of the opinion that the petitioner be allowed to travel to Indonesia, subject to the condition that he deposits a sum of Rs.50 Lakhs in the High Court of Calcutta. The said deposit should either be in cash or in the form of Demand Draft/Pay Order. The said deposit be kept by the High Court in an interest bearing Fixed Deposit. On deposit of the said amount, the passport shall be released to the petitioner. However, it is made clear that the petitioner shall inform the Court about the*

> *date of leaving the country for Indonesia and shall also report back to the Court as soon as he comes back to India."*

In ***Pitam Pradhan Vs. State of A.P. and another 2014 SCC OnLine SC 1795*** also the Supreme Court permitted the petitioner therein who was facing a criminal case originating from a matrimonial dispute to travel abroad in connection with his employment.

Thus, after considering the facts of the cases before it the Supreme Court has permitted accused persons on bail to travel abroad. While doing so it has been held by the Supreme Court that lodging of an FIR itself cannot be construed as a bar on the travel of an accused and that while considering such a plea of an accused the Court is required to balance the public interest in the enforcement of criminal justice with the rights of the accused. It has further been held that the human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused in the proper course of investigation as also to ensure a fair trial.

In the present case respondent No.2, who is a Senior Software Engineer with 08 years of experience with no other criminal antecedents, is facing criminal proceedings which originate from a matrimonial discord between him and the petitioner. In such criminal proceedings he sought and got anticipatory bail from this Court. It is not disputed that while on bail he joined and cooperated with the investigation and the same is now complete.

While appearing before this Court in person respondent No.2 has undertaken that for the grant of permission to travel to Canada for a period of 04 weeks he would abide by any condition to be imposed by this Court and that after the expiry of the said period of 04 weeks he would also make himself available as and when required by the Trial Court.

To show his *bona fides* respondent No.2 has also produced on the record of this Court documents pertaining to the 'property' which is under the ownership and possession of his mother. Such 'property' is valued at Rs.12.50 lakhs (approx). He has also filed his mother's affidavit offering to deposit the original documents pertaining to the 'property' before the concerned Illaqa Magistrate/Trial Court as security to return to India to face his trial with a further undertaking that in case of default on his part, the 'property' be forfeited.

After considering the afore submissions and the law laid down by the Supreme Court, this Court permits respondent No.2 to travel to Canada from 10.09.2022 till 11.10.2022. However, such permission is subject to the following conditions : -

(i) In terms of the offer made in the affidavit filed before this Court by respondent No.2's mother - Mrs. Dipika Dhingra, she shall deposit with the concerned Illaqa Magistrate/Trial Court all the original documents pertaining to the ownership of the 'property' and the same shall be accepted by the concerned Court only after it is satisfied that it is respondent No.2's mother who owns and possesses it as also that the same is free from all encumbrances;

(ii) In terms of the afore referred affidavit of respondent No.2's mother, she shall also furnish an undertaking with the concerned Illaqa Magistrate/Trial Court that in case, after 11.10.2022, respondent No.2 fails to return to India to face his trial the 'property' be forfeited and sold and its proceeds be equally divided between the State and the petitioner;

(iii) In addition to the above respondent No.2 shall also furnish with the concerned Illaqa Magistrate/Trial Court a FDR amounting to Rs.7 lakhs which shall be accompanied by his undertaking that if after 11.10.2022 he fails to make himself available in his trial such FDR be forfeited and the proceeds thereof be equally divided between the State and the petitioner and that

(iv) Respondent No.2, at all times, shall furnish/update before the concerned Illaqa Magistrate/Trial Court details and full particulars of person(s) residing in Pathankot who would be authorized on his behalf to receive any process/notice from the Court while he is in Canada.

On respondent No.2's return to India on or before 11.10.2022, on a specific application filed by him, the afore security deposited by him and his mother shall be returned to respondent No.2 and his mother, respectively.

The impugned order of the Trial Court dated 26.05.2022 is modified to the afore extent and the present petition is disposed of in terms of the above directions.

27.07.2022 **(DEEPAK SIBAL)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No