

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

207A

CRM-M-26613-2022

Date of Decision : **July 08, 2022**

VINOD KUMAR

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. J.S.Ghumman, Advocate
for the petitioner.

Mr. Ashok Giri, Advocate
for the respondent.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 482 of Cr.P.C. with a prayer for quashing and setting aside the impugned order dated 8.6.2022 (Annexure P-5) whereby the application filed by the petitioner seeking permission to leave India and to attend an important medical appointment has been dismissed by learned Judicial Magistrate 1st Class, Jalandhar.

It has been submitted by the learned counsel for the petitioner that it is a case where complaint was filed under Sections 323, 341, 506 and 34 IPC dated 1.3.2018 which was emanating basically from a matrimonial dispute between the brother of the petitioner, namely, Manoj Kumar and his wife in which there are some allegations of assault. He submitted that the petitioner is a citizen of UK and he is well settled over there and he has been falsely implicated in the present case only

because of the reason that he is the elder brother of the husband of the complainant and it was only in order to pressurize the brother of the petitioner that the present petitioner was also implicated in the present case. He further submitted that be that as it may, when the proceedings commenced before the learned trial Court since he was already in UK, he was declared as a proclaimed offender but on coming to know with regard to the same, he voluntarily came back to India and filed a petition before this Court vide CRM-M-20258-2022 challenging the order declaring him as a proclaimed offender in which interim order was passed on 12.5.2022 and the petitioner was also directed to surrender before the learned trial Court on or before 27.5.2022. He submitted that in pursuance of the aforesaid directions, the petitioner surrendered before the learned trial Court and has been granted bail and the offences are also bailable offences. He further submitted that the aforesaid CRM-M-20258-2022 also came up for hearing today and the same has been disposed of as having been rendered redundant since the petitioner has already surrendered.

The learned counsel for the petitioner has submitted that the petitioner himself had come back to India for facing the trial but the petitioner does not have good medical condition and rather he is under constant supervision of the doctors in UK and he himself is a citizen of UK. He referred to the medical history of the petitioner vide Annexure P-4 whereby the doctors of St. Thomas Hospital, Westminster Bridge Road, London have given the medical history of the petitioner in which it is stated that he is suffering from **necrotizing pancreatitis**. In the

medical summary, it is also stated that from the year 2022 he had 1 episode of vomiting because he had necrotizing pancreatitis and he was started with 1 litre of oxygen and IV proton pump inhibitors as per protocol for pancreatitis and was given antibiotics etc. apart from intravenous fluids and he was also transferred to ICU because a number of medical complications developed. The relevant portion of Annexure P-4 which is the medical history is reproduced as under:-

“You were admitted to Intensive Care EW2 ward on 27 March 2020 (11:56 AM) under the care of Mr. A Williams. The reasons for your admission was : abdominal pain and vomiting. During addressed – Nectrotising Pancreatitis (this was the main problem)

This is a medical summary of your admission :

Mr. Kumar was admitted the 27.3.2020 with abdominal pain and 1 episode of vomiting. Blood tests and scans performed showed that he had a necrotizing pancreatitis. He was started on 1 litre of oxygen and IV proton pump inhibitors as per our protocol for pancreatitis. He was also started on antibiotics and regular anti emetics for the nausea. He was not eating much so he was given intravenous fluids to keep him hydrated.

On the 29.3.2020, in the evening, he deteriorated with an increasing oxygen requirement. He was reviewed by our clinical response team and transferred to intensive care unit. He was intubated until the 8.4.2020. He was transferred back to the ward on the 14.4.2020.

During his stay in the ITU he was fed via a nasogastric tube. This continued until he was able to have enough calories orally. NG feed was stopped and NG tube was removed the 16.4.2020.

Initially he suffered from swallowing problems. He was assessed by our speech and language therapist team and his swallowing has now improved. He also suffered from a hoarse voice, which has improved since he has been extubated. Patient has been booked for an outpatient appointment with ENT to follow up his dysphonia in community.

Following his diagnosis of pancreatitis he was noted to have high blood sugars. He has been reviewed by our diabetes advisory team who has started him on insulin. He has been taught how to self administer the insulin.

A CT Scan was repeated on the 17.4.2020 showing the pancreatitis has improved and there was no evidence of any peri-pancreatic collections. He is being discharged now that his blood tests have improved and he clinically has improved.”

The learned counsel for the petitioner has further referred to Annexure P-3 by which an appointment has been fixed by the aforesaid doctors for 17.6.2022 in the dietitian clinic. He submitted that a regular and routine check up is being done by the doctors of UK for the severe disease of necrotizing pancreatitis and the petitioner cannot take a chance to omit such an appointment because that affects his life. He further submitted that after his surrender before the learned trial Court, he filed an application for seeking permission to travel abroad for the purpose of getting him checked up in pursuance of the appointment fixed by the doctors i.e. 17.6.2022 vide Annexure P-3 which was an extremely important medical emergency of the petitioner. However, the learned Judicial Magistrate 1st Class, Jalandhar has dismissed the application vide impugned order Annexure P-5 on the ground that the petitioner was

earlier declared as a proclaimed offender but although he has surrendered but the petition challenging the PO order was still pending before the High Court and only an interim order has been passed and, therefore, no permission can be granted to him to travel abroad.

The learned counsel for the petitioner further submitted that although the reasons recorded by the learned Judicial Magistrate 1st Class, Jalandhar were erroneous but at the same time the said petition filed before this Court has now been decided by this Court on an even date and since the petitioner has already surrendered, the PO order does not stand and, therefore, the petition has been rendered redundant by this Court. He submitted that, therefore, the petitioner is not a PO as of today and this cannot become a ground for denial of permission to travel abroad since the reasons for travelling abroad for a particular period were only due to medical emergency as aforesaid. He relied upon the judgment of the Hon'ble Supreme Court in **Parvez Noordin Lokhandwalla Vs. State of Maharashtra and Anr. 2021(1) SCC (Crl.) 436** in this regard.

The learned counsel for the petitioner has also submitted that the petitioner needs to travel abroad i.e. UK for a period of six weeks so as to get further treatment from the doctors concerned by way of rescheduling of the dates of appointment and he will stick to the time schedule of six weeks from the date of departure till the date of arrival in India.

Mr. Ashok Giri, Advocate has appeared on behalf of respondent No.2 and has opposed the grant of permission to the petitioner on various grounds. Firstly, he submitted that the conduct of the

petitioner would disentitle him from travelling abroad since earlier he was declared as a proclaimed offender although he has now surrendered and as of today he is not a proclaimed offender. Secondly, he has moved an application to go abroad during the pendency of the petition challenging PO order and, therefore, he is not entitled for the same. Thirdly, he submitted that there is no need for the petitioner to travel abroad for seeking the medical treatment since better doctors are available in India. Fourthly, the delay in the trial has been caused because of the petitioner and fifthly the petitioner has not challenged the summoning order.

I have heard the learned counsels for the parties.

The petitioner is the brother of Manoj Kumar who is the husband of the complainant and the dispute appears to be primarily a matrimonial dispute. The petitioner was earlier declared as a proclaimed offender but in pursuance of the directions issued by this Court he has already surrendered. The medical history given by the doctors of UK would show ex-facie that the petitioner is really having a severe medical problem pertaining to pancreatitis. The argument raised by the learned counsel for the respondent No.2 that since earlier he was declared as a proclaimed offender, he cannot be granted permission is misconceived and is not sustainable in view of the fact that the petitioner himself has returned back and surrendered before the learned trial Court after he had given an undertaking before this Court in pursuance of which direction was issued to him to surrender and this fact cannot come into way for grant of permission to the petitioner because it is the right of life which is

guaranteed under Article 21 of the Constitution of India which is at stake. The second argument raised by the learned counsel for the respondent No.2 that during pendency of the petition for challenging the order declaring him as a proclaimed offender, the petitioner filed an application to travel abroad is not sustainable in view of the fact that there is no correlation with regard to the pendency of the petition filed before this Court once the operation of the order declaring him as a proclaimed offender was stayed by this Court. The third argument raised by the learned counsel for the respondent No.2 that better doctors are available in India deserves to be rejected. It is not that proper medical doctors are not available in India. Rather India has much more better expertise and rather India is pioneer in many fields in medical science. However, in the present case the petitioner is a citizen of UK and he is already under treatment from those doctors in UK for a disease which is a severe disease affecting the life of the petitioner and, therefore, respondent No.2 cannot be permitted to take a plea that since the doctors are available in India, the petitioner should not be granted permission and, therefore, the argument raised by the learned counsel for the respondent No.2 is totally misconceived. Another argument raised by the learned counsel for the respondent No.2 that the petitioner has not challenged the summoning order and there was a delay in the trial. However, it is not a case that the petitioner does not want to face the trial and rather he himself has come back from abroad and surrendered before the Court and, therefore, the said argument is also unsustainable. During the course of the arguments, the learned counsel for the petitioner has also submitted that the delay in

coming back to India for the purpose of facing trial was because of Covid-19 pandemic after March 2020 and the flights were also suspended.

The Hon'ble Supreme Court in Parvez Noordin Lokhandwalla's case (supra) observed that a person cannot be denied to travel abroad merely because of pendency of an FIR. Here is a case where on the one hand respondent No.2 takes objection that the petitioner is an accused although in bailable offences and he should not go abroad for treatment and should get treatment in India and on the other hand, the Fundamental Rights guaranteed to the petitioner under Article 21 of the Constitution of India are required to be protected as well. This Court is of the view that the rights protected under Article 21 of the Constitution of India will always prevail over any kind of technicalities etc. in this regard. Further-more there is no sufficient material available either on the record or from the arguments raised by the learned counsel for the respondent No.2 that in case the petitioner is granted permission then he may not come back. Apart from the same, the learned counsel for the petitioner has prayed for permission only for six weeks.

In view of the aforesaid position, this Court is of the considered opinion that the impugned order dated 8.6.2022 is liable to be set-aside.

Consequently, the present petition is allowed and the impugned order dated 8.6.2022 is set-aside and the permission is granted to the petitioner to travel to UK for a period of six weeks between 30.7.2022 till 15.9.2022. The aforesaid permission is granted subject to

furnishing of bank guarantee of Rs.2.5 lacs before the learned trial Court.

After the matter was dictated in the Court, after some time the learned counsel for the petitioner appeared again and at this stage he stated that he contacted the learned counsel for the petitioner at the District Court, who informed him that the petitioner has suffered acute medical emergency and consequently he had no option but to immediately go back to England for getting his treatment to save his life and he went back in the last week of June.

The learned counsel for the petitioner has submitted that in view of the aforesaid position, he may be permitted to withdraw the present petition and he may also be granted liberty to file an appropriate petition in due course.

In view of the aforesaid request made by the learned counsel for the petitioner, the present petition is dismissed as withdrawn at this stage.

(JASGURPREET SINGH PURI)
JUDGE

July 08, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No