

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

**CRM-M-41073-2022
Date of Decision: 27.09.2022**

Sarthak Tandan

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.Nikhil Ghai, Advocate and Mr.Siddhant Arora, Advocate
for the petitioner

Mr.Navneet Singh, Senior Deputy Advocate General, Punjab

Mr.Gautam Dutt, Advocate for the complainant/
respondent No.2

Deepak Sibal, J. (Oral)

Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of order dated 25.08.2022 passed by the Chief Judicial Magistrate, Hoshiarpur (for short – the Magistrate) through which the petitioner, who is an accused in FIR No.41 dated 11.03.2021 registered under Sections 498-A, 406 and 420 IPC at Police Station Model Town, Hoshiarpur, has been denied permission to go to the United States of America (for short, the USA) for taking part in a training programme to be held between 03.10.2022 and 05.10.2022.

The petitioner and respondent No.2 got married on 10.11.2019. Thereafter their relationship got strained leading to the filing of a complaint by respondent No.2 with the police on the basis whereof the aforesaid FIR

was registered against the petitioner. Apprehending arrest, the petitioner sought and got anticipatory bail from the Sessions Court at Hoshiarpur.

Investigations were conducted by the investigating agency in the aforesaid FIR and when the same were complete they filed a report under Section 173 Cr.P.C. before the competent Court seeking therein to prosecute the petitioner under Sections 498-A, 406 and 420 IPC. On the basis of such report the Trial Court framed charges against the petitioner and it is at that stage that he filed an application before the Magistrate seeking therein permission to go to the USA in the first week of October 2022 to attend CyberKnife CNS and Physician Training Programme (for short – the Programme) to be conducted from 03.10.2022 till 05.10.2022 at Madison W.I. (USA). Such permission was sought on the ground that he was a qualified doctor and was presently serving as a Consultant at the Rajiv Gandhi Cancer Institute and Research Centre, Rohini, New Delhi and due to the nature of his job he needed to attend the aforesaid training programme which has also been made compulsory by his employer. Through the impugned order the Magistrate denied the sought permission on the ground that no document had been placed on the record showing that the training programme which the petitioner seeks to attend has been sponsored by his employer and that in his application the petitioner had not given any no objection that in his absence evidence in his trial be led.

Learned counsel for the petitioner submits that the petitioner is a qualified doctor and is presently serving as a Consultant in Radiation Oncology at the Rajiv Gandhi Cancer Institute and Research Centre, Rohini, New Delhi; the petitioner's employer has recommended his taking part in

the Programme which is to be held from 03.10.2022 till 05.10.2022 at Madison W.I. (USA); the stay and expenses for attending the Programme have been sponsored by the training party (in this regard reference was made to the email sent by such party and annexed with the petition as Annexure P-2); the petitioner's employer had selected the petitioner to represent the Institute in the aforesaid Programme (in this regard attention of this Court was drawn to the letter by the employer annexed with the petition as Annexure P-3); due to the nature of the petitioner's job he needs to attend the Programme which would enhance his skills; the petitioner's parents namely Pardeep Tandon and Rama Tandon owned Flat No. E-704, Pawittra Apartment Vasundhra Enclave S.O. East Delhi (for short - the 'property') which is valued at about Rs. One crore; they along with the petitioner have filed an affidavit before this Court that they would submit the original ownership documents of the 'property' before the competent Court to secure the petitioner's return after attending the Programme and that in case the petitioner failed to abide by any of the conditions imposed by this Court the 'property' may be put to auction and the proceeds thereof be equally shared by the State and respondent No.2.

Learned counsel appearing for respondent No.2 submits that in the light of the afore undertaking given by the petitioner and his parents his client has no objection to the petitioner's attending the Programme in the USA.

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

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.

The petitioner is a qualified doctor with no other criminal antecedents and in the present case is facing criminal proceedings which originate from a matrimonial discord between him and respondent No.2. In such criminal proceedings he sought and got anticipatory bail from the

Sessions Court at Hoshiarpur. It is not disputed that while on bail he joined and cooperated with the investigation which is now complete.

The petitioner as also his parents have filed affidavits before this Court through which they have undertaken that if the petitioner is permitted to travel abroad to attend the Programme he shall return to India by 10.10.2022 and that to ensure his return they are willing to deposit with the Trial Court original documents pertaining to the 'property' which in the event of the petitioner not abiding by the conditions imposed by this Court be put to auction and the proceeds thereof be divided equally between the State and respondent No.2.

The prayer made by the petitioner to travel abroad is to further his career prospects which would be hampered if the sought permission is denied.

After considering the totality of the afore facts and the law laid down by the Supreme Court, this Court is of the opinion that the petitioner be permitted to travel to the USA from 02.10.2022 till 09.10.2022. However, such permission is subject to the following conditions : -

- (i) In terms of the offer made in the affidavits filed in this Court by the petitioner, his parents namely Pardeep Tandon and Rama Tandon, they 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 them who own and possess the 'property' as also that the same is free from all encumbrances;
- (ii) In terms of the afore referred affidavits filed by the

petitioner's parents they shall also furnish an undertaking before the concerned Illaqa Magistrate/Trial Court that in case, on or before 10.10.2022, the petitioner fails to return to India to face his trial the 'property' be forfeited and sold as also that its proceeds be equally divided between the State and respondent No.2;

- (iii) the petitioner, at all times, shall furnish/update before the concerned Illaqa Magistrate/Trial Court details and full particulars of person(s) residing in Hoshiarpur who would be authorized on his behalf to receive any process/notice from the Court while he is in USA.

On the petitioner's return to India on or before 10.10.2022, on a specific application which may be filed by him, the afore security deposited on his behalf shall be returned to him/ his parents.

The impugned order of the Trial Court dated 25.08.2022 is set aside and the petition is allowed in the afore terms.

27.09.2022
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No