

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21709 of 2022 (O&M)

Date of decision:23.09.2022

Senior Constable Hitesh Arora

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Manbir Singh Batth, Advocate
for the petitioner.

Ms. Rishu Madaan, AAG, Punjab.

JAISHREE THAKUR, J. (ORAL)

The writ petition has been filed seeking permission to proceed on Ex-India Leave for 90 days to travel Australia for attending marriage of his family member, since the application submitted by the petitioner for grant of Ex-India Leave is not being considered by the respondent-Department.

In brief, the facts are that the petitioner had been appointed as Constable on 16.10.2011 and came to be nominated as an accused in FIR No.95 dated 16.12.2021 under Sections 406, 120-B IPC registered at Police Station Singh Bhagwantpura, District Roopnagar. The petitioner herein sought permission to apply for an Australian visa, which was duly granted to the petitioner by respondent No.3 on 05.07.2022. Thereafter, the petitioner applied for Australian visa, which was granted to him on 19.08.2022 for three years i.e. upto 19.08.2025. After obtaining the visa, the petitioner applied for Ex-India Leave for three months i.e. from 20.09.2022 to 20.12.2022 to respondent No.3 on 29.08.2022, which has not

been considered nor appropriate permission being given to him to travel abroad. Consequently, the instant writ petition has been filed.

Learned counsel appearing on behalf of the petitioner would vehemently argue that the petitioner was falsely implicated under the said FIR and in fact, the matter stands duly investigated and the cancellation report dated 06.09.2022 has been prepared, however, the same has not been presented in Court as yet. It is submitted that in case, he had been nominated as an accused, he would have sought permission of the trial court to travel abroad but since he is neither an accused nor wanted as such, considering the fact that he has been found innocent in the investigation itself, he has no recourse other than to approach this Court for grant of leave to travel abroad to attend the wedding in the family. It is further argued that his wife is already in service with the same department and therefore, the question of him absconding or not returning, would not arise. The petitioner is ready to furnish an undertaking to the effect that he will return within a period of 30 days from the date of his departure from India i.e. 27.09.2022, failing which his bank guarantee so furnished would be liable to be forfeited and appropriate departmental action be initiated against him.

Learned counsel appearing on behalf of the respondent-State would oppose the relief as sought by the petitioner by contending that the petitioner herein has been nominated as an accused in the FIR and the cancellation report has yet not been accepted.

I have heard learned counsel for the parties and have perused the pleadings of the case. Admittedly, as on date, the petitioner though nominated as an accused in the FIR is not wanted by the investigating agency, considering the fact that the cancellation report stands prepared. It

would have been different situation, in case the cancellation report had been filed and not accepted by the trial court. Considering the fact that as on date, the petitioner is not wanted either by the investigating agency nor has been summoned by the trial court, the plea of the petitioner to travel abroad is hereby accepted, subject to him furnishing bank guarantee of Rs.10 lakhs in favour of Punjab State Police Welfare Fund and an undertaking with the respondent No.3 to the effect that in case he does not return within a period of 30 days from the date he exits India i.e. 27.09.2022, the bank guarantee furnished by the petitioner shall stand forfeited without any objection being raised by the petitioner or any of his family member. Moreover, the undertaking will also contain a clause that he will raise no objection to any departmental proceedings initiated against him in case he does not return within the period as specified herein above.

Consequently, the instant petition stands allowed. This order is being passed in the peculiar facts and circumstances of the present case while also considering the fact that wife of the petitioner is in government service.

A copy of the order be supplied to the counsel appearing for the petitioner under the signatures of Bench Secretary of the Court.

September 23, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No