

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

(Sr. No. 262)

CRM-M-47882 of 2021

Date of decision : 09.05.2022

Anubhav Khanna

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Bipan Ghai, Senior Advocate with
Ms. Ritu Punj, Advocate and
Mr. Prabhdeep Singh Bindra, Advocate for the petitioner.

Ms. Gunkirat Kaur, AAG, Punjab.

Mr. Raman Goklaney, Advocate for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

Through the present petition filed under Section 482 Cr.P.C. challenge is made to the order dated 08.11.2021 passed by the Additional Sessions Judge, Fazilka (for short – the Trial Court) through which an application filed by the petitioner seeking therein permission to travel to Abu Dhabi for the purpose of joining his place of posting has been rejected. On the quashing of the order the petitioner seeks permission of this Court to travel to Abu Dhabi for the aforesaid purpose.

The petitioner and respondent No.2 got married on 05.03.2018.

Thereafter, their relations got strained leading to the filing of a complaint by

respondent No.2 with the police on the basis whereof an FIR bearing No.120 dated 15.07.2021 was registered against the petitioner under Sections 406/498-A IPC and Section 4 of the Dowry Prohibition Act, 1961 at Police Station City Fazilka. Apprehending arrest, the petitioner sought anticipatory bail from the Sessions Court at Fazilka which was granted on 22.09.2021. While the investigation was underway, the petitioner filed an application before the Trial Court seeking its permission to travel to Abu Dhabi to join his place of posting which application of his was rejected primarily on the ground that no undertaking of the petitioner's employer had been produced by the petitioner to ensure that his employer would permit the petitioner to come to India as and when his presence was required for investigation purposes or in his trial. Such order of the Trial Court is under challenge through the present petition.

Learned senior counsel appearing for the petitioner submits that after the grant of anticipatory bail the petitioner has always joined and cooperated with the investigation; on one occasion, to join the investigation process, the petitioner had even travelled back to India from Abu Dhabi; to show his *bona fides* the petitioner offers to deposit with the concerned Illaqa Magistrate original property papers of his residential flat - First Floor, 20, E-1.1, Vatika India Next, Gurgaon-122004 (for short – the flat) which is worth over Rs.80 lakhs; the petitioner is also ready to furnish an undertaking that in case he fails to make himself available as and when required by the investigating agency/Trial Court 'the flat' be forfeited and the proceeds thereof be divided equally between the State and respondent No.2; in case the petitioner is not granted the permission to travel to Abu Dhabi it would

cause irreparable loss to him in terms of his career prospects; his financial position shall also be adversely affected and that the *bona fides* of the petitioner are further borne out from the fact that while on bail he did not leave this country and is seeking permission to do so.

Learned State counsel submits that the investigation in the case is complete; the State shall be shortly filing its report under Section 173 Cr.P.C. and that in case this Court is inclined to grant to the petitioner the sought permission, the same be subject to stringent conditions to ensure his availability during the investigation process or before the Trial Court.

In addition to adopting the afore submissions made on behalf of the State, learned counsel appearing for respondent No.2 submits that the petitioner should also make himself available at the time of filing of the report by the State under Section 173 Cr.P.C. He further contends that respondent No.2 had initiated proceedings against the petitioner under Section 125 Cr.P.C. in which he has been ordered to be proceeded against *ex parte*. To prevent delay in disposal of such proceedings, before the petitioner leaves for Abu Dhabi, he should join such proceedings and also file therein his affidavit with regard to his assets and liabilities in terms of the judgment of the Supreme Court in ***Rajnesh Vs. Neha and another (2021) 2 Supreme Court Cases 324.***

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 the accused persons on bail to travel abroad and while doing so has held 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 in the present case is facing criminal proceedings which originate from a matrimonial discord between him and his wife. He sought and got anticipatory bail from the Sessions Court at Fazilka. It is not disputed that while on bail he joined and cooperated with the investigation

which is now complete. The State does not deny that to join the investigation process, the petitioner had once even travelled from Abu Dhabi to India.

The petitioner has no other criminal antecedents. In fact he is a qualified software engineer with 14 years of experience to his credit. Neither the State nor respondent No.2 has even disputed the genuineness of the petitioner's offer of appointment and his posting as Senior Big Data Developer in Abu Dhabi. The petitioner has undertaken before this Court that he would make himself available as and when required by the investigating agency or the Trial Court. The petitioner has also produced on the record of this Court property papers showing his ownership and possession of 'the flat' which undisputedly is valued at over Rs.80 lakhs. He has even offered to deposit the original property papers of 'the flat' before the concerned Illaqa Magistrate/Trial Court as security to secure his presence as and when required with a further undertaking that in case there is a default on his part, 'the flat' be forfeited.

The reason given by the Trial Court to deny permission to the petitioner to travel abroad is that he has not produced any permission by his employer to the effect that the employer has no objection if the petitioner travels to India as and when so required by the investigating agency/Trial Court. In the light of the undertaking given by the petitioner it would be solely the petitioner's responsibility to live up to the same as it is he who will bear the consequences for its breach.

Apropos the afore discussion and in the light of the law laid down by the Supreme Court, this Court permits the petitioner to travel to Abu Dhabi for joining and serving at his place of posting. However, such permission would be subject to the following conditions : -

- (i) As offered by the petitioner, he shall deposit with the concerned Illaqa Magistrate/Trial Court the original property papers of 'the flat' and the same shall be accepted by the concerned Court only after it is satisfied that it is the petitioner who owns and possesses such property as also that the same is free from all encumbrances;
- (ii) The petitioner shall file an undertaking before the concerned Illaqa Magistrate/Trial Court that he shall make himself available as and when required by the investigating agency or the Trial Court unless specifically exempted from personal appearance and that in case he fails to make himself available sans any specific exemption from personal appearance 'the flat' be forfeited and sold through a public auction and its proceeds be divided equally between the State and his wife;
- (iii) Before the petitioner leaves for Abu Dhabi he shall, on the no objection by respondent No.2, join the proceedings initiated by respondent No.2 under Section 125 Cr.P.C. and file his affidavit in terms of the judgment of the Supreme Court in ***Rajnesh Vs. Neha and another (2021) 2 Supreme Court Cases 324.*** (Such a condition is being imposed so as not to delay the consideration of respondent No.2's prayer for grant of maintenance on account of non availability of the petitioner.)

- (iv) The petitioner, at all times, shall furnish/update before the investigating agency/Illaqa Magistrate/Trial Court details and full particulars of person(s) residing in Fazilka who would be authorized by him to receive, on his behalf, any process/notice from the investigating agency/Court while he is in Abu Dhabi.

Accordingly, the order of the Trial Court dated 08.11.2021 shall stand set aside and the present petition shall stand disposed of in terms of the above directions.

09.05.2022

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No