

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

Sr. No.112

CRM-M-57172-2022

Date of decision : 9.12.2022

Kulwinder Kaur and another

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Suvir Sidhu, Advocate for the petitioner

Mr.Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 15.11.2022, Annexure P-5, passed by learned CJM Barnala and for granting permission to the petitioners to travel abroad.

At the outset, learned counsel for the petitioners prays for withdrawal of the petition qua petitioner No.1 at this stage. In so far, petitioner No.2 is concerned, her application filed before the trial Court for seeking permission to go abroad was wrongly dismissed vide order dated 15.11.2022, on the ground that there are chances that in case such permission is granted, the accused might flee from criminal justice system. It is submitted that she was granted concession of interim anticipatory bail by this Court vide order dated 26.09.2022 with a direction to join investigation on or before 15.11.2022. In this regard, he submits that the petitioner joined investigation a month prior to the aforesaid date i.e. on

15.10.2022, whereafter, her petition was allowed on 05.12.2022, on the statement of learned State counsel affirming the aforesaid fact and stating that she was no longer required for custodial interrogation. Learned counsel further contends that petitioner Samandeep Kaur has to appear in examination of NCLEX to be held on 14.12.2022 at 8 AM, Pacific Standard Time at the test centre location : Pearson Professional Centre- Victoria BC, as is reflected in Annexure P-3, it being confirmation of examination appointment. He has also filed an affidavit of the aforesaid petitioner, which is taken on record as Mark 'A', in support of the aforesaid fact and in paras 6 to 10 thereof, it is mentioned that she will fly to Canada on 12.12.2022 for examination and undertakes to return to India on 29.1.2023 regarding which the air tickets have also been booked by her, attached as Annexure A-1, her readiness to furnish bank guarantees and to comply with any other conditions as this Court deems fit to impose upon her while granting her permission and that within 5 days of her return to India she will surrender her passport before the trial Court and shall not visit any other country except Canada during the aforesaid period. Learned counsel relies on the orders passed by this Court in CRM-M-8954-2020, titled **Kulbir Kaur and another vs. Parminder Singh and another**, decided on 6.3.2020, CRM-M-48671-2018, titled as **Hemant Goyal vs. State of Haryana**, decided on 1.11.2018 and CRM-M-3304-2021, titled as **Amit Sureshmal Lodha vs. State of Haryana**, decided on 9.11.2021 to contend that permission to go abroad had been granted subject to conditions. He on instructions from his clients submits that permission may be granted subject to imposition of any condition.

On the other hand, learned State counsel opposes the petition on the ground that in case the permission is granted, there is apprehension of petitioner not returning.

Heard.

It is apposite to notice that the petitioner had returned to India and thereafter on the direction of the Court joined the investigation within time granted. Learned State counsel has also affirmed the factum of joining and not required for custodial interrogation of the petitioner. No plausible reason has been assigned by the trial Court to dismiss the application except the general reason of fleeing from justice. From the documents, it is apparent that the aforesaid petitioner wants to go abroad for the purpose of appearing in the examination, confirmation of which has been appended to the petition as Annexure P-3, indicating the date of the exam as 14.12.2022 at 8 AM and for that she has undertaken by way of a duly sworn affidavit dated 8.12.2022, wherein she has specifically stated that after the exam she will come back and surrender her passport within 5 days before the trial Court. She has also appended therewith her return ticket for 29.1.2023.

With regard to grant of permission, a reference is made to judgment of Hon'ble The Supreme Court of India in the case of **Parvez Noordin Lokhandwalla vs. State of Maharashtra and another**, reported as (2020) 10 SCC 77, wherein the relief to travel abroad was granted, as was in the case of **Srichand P. Hinduja vs. State through CBI, New Delhi**, reported as 2002 (3) RCR (Crl.), 186, wherein condition to execute a bond was imposed while granting such permission. Further in the case of **Satish Chandra Verma vs. Union of India and others** 2019(2) SCT 741,

wherein it was held that right to travel abroad is an important basic human right. Para as relevant to the present case reads thus:-

“5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 which are as follows: “Freedom to go abroad has much social value and represents the basic human right of great significance.”

Considering the judgments of Hon’ble The Supreme Court of India, right to travel abroad being an important basic human right, on one hand and the right of the prosecution to duly prosecute the petitioner, so as to prevent her from evading the trial on the other, thus, a balance between the same is required to be drawn. Paramount consideration laid is to the conditions to be imposed upon the petitioner, to ensure, she does not flee from justice.

Keeping in view the facts and circumstances of the case, in particular that the petitioner had complied with the order of this Court regarding joining and cooperating with the investigating agency in the case, pursuant to which, the anticipatory bail was confirmed and that her reason for travel abroad being to appear in an examination to be held on 14.12.2022, prayer of petitioner No.2 Samandeep Kaur, is accepted to the extent of according permission to proceed to Canada only upto 29.01.2023, for which her return ticket, Annexure A-1, has been booked, subject to the

following conditions:

- 1) Petitioner No.2-Samandeep Kaur shall furnish two sureties in the sum of Rs.25 lacs each, to the satisfaction of the concerned trial Court/Duty Magistrate, one of which should be her mother, Kulwinder Kaur, for ensuring her return from abroad.
- 2) Petitioner No.2-Samandeep Kaur shall also furnish an undertaking by way of her affidavit, to appear on 04.02.2023 and surrender her passport forthwith.
- 3) Upon the acceptance of the sureties and also upon giving the undertaking, as directed aforesaid and after specifying the date of return in the aforesaid manner, the passport of the petitioner shall be released to her to go abroad.
- 4) During the period of the petitioner being abroad, she shall be permitted to appear through her counsel.
- 5) The petitioner shall not visit any other country except Canada, during the said period for which the permission to travel abroad has been granted by this Court.
- 6) Copy of this order be sent to the Canadian Embassy at New Delhi.

It is made clear that in the eventuality of petitioner-Samandeep Kaur not returning by the stipulated date, the State is at liberty to file an application seeking cancellation of bail granted to her by this Court.

Disposed of accordingly.

9.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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