

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

(107+292)

CWP-6423-2023 (O&M)

Decided on: 01.05.2023

Kamal Preet Singh

....Petitioner

Versus

Union of India & others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. S.S.Rangi, Advocate
Mr.K.K.Goel, Advocate
Mr.Zorawar Singh, Advocate, for the petitioner.

Mr.Satya Pal Jain, Additional Solicitor General of India
with Mr.Arvind Seth, Advocate, for respondent Nos.1 & 2-UOI.

Mr.Shekher Verma, Advocate, for respondent No.3.

G.S. Sandhawalia, J.

Petitioner in the present writ petition filed under Article 226/227 of the Constitution of India seeks writ for directing respondent Nos.1 & 2 to produce the Look Out Circulars issued against him and to quash the same so that he can travel abroad. Resultantly, directions are also sought to expunge the entry made on the passport of the petitioner (Annexure P-13) wherein it has been stamped as “Cancelled Without Prejudice” on 15.03.2023.

2. Counsel for the petitioner submits that inter se parties judgment has already been pronounced in his favour on 12.12.2022 (Annexure P-6) and therefore respondent Nos.1 & 2 were not justified in

preventing him from travelling abroad on 15.03.2023 when he had sought to go to United States of America.

3. Counsel for respondent Nos.1 & 2, Mr.Jain submits that on an earlier occasion, there was a direction that petitioner be permitted to travel abroad for 2 months and therefore, as per the directions of this Court, he was not permitted to travel abroad for the second time as even the earlier travel was subject to the condition of depositing an FDR of Rs.10 lakhs with the Registrar General of this Court which FDR was to be valid for a period of one year.

4. It is to be noticed that on an earlier occasion, in CWP-25686-2022, it was noticed that the petitioner has a Permanent Residency Certificate of the USA and also has a business. The petitioner had appended his Permanent Residency Certificate which is also attached herein (Annexure P-4) as a matter of proof. It is in such circumstances, while noticing that he has a trucking business in USA registered under the name of M/s Lionson Trucking Inc., Modesto, California and the fact that he had visited several countries and has never been prevented from travelling abroad, the writ petition had been allowed while noticing that he had been stopped on 23.10.2022 when he was travelling to USA. It was noticed that it was on account of an outstanding loan which was secured with a mortgage of 87 kanals of land valued at Rs.4.02 crores as per the sanction letter dated 09.09.2013 and action had been initiated before the DRT-III, Chandigarh to recover the dues of Rs.1.23 crores. Resultantly, while placing reliance upon the judgments of the Apex Court in **Maneka Gandhi Vs. Union of India (1978) 1 SCC 248** and **Satish Chandra Verma Vs. Union of India 2019 SCC Online SC 2048**, the writ petition

had been allowed with the following observations:

“The loan sanctioned to petitioner is secured with a mortgage of 87 Kanals valued at Rs.4.02 Cr as per loan sanction letter dt.9.9.2013, and since the same would adequately cover the loan liability of the Bank, and it had initiated action before the DRT-III, Chandigarh to recover dues of Rs.1.23 Cr from petitioner, it's objections to petitioner's travel abroad are not sustainable.

However in view of declaration of loan account as fraud and declaration of petitioner as a “willful defaulter” and filing of a police complaint, though after filing of the Writ Petition, subject to certain conditions, he can be permitted to travel abroad.

Accordingly the Writ Petition is allowed; subject to the petitioner depositing an FDR/TDR for Rs.10 lakhs taken from a nationalized Bank and valid for one year with the Registrar General of this Court within 2 weeks, the LOC issued against the petitioner at the instance of respondent No.3 by respondent No.2 is set aside, and the petitioner is permitted to travel abroad for 2 months from the date of his departure from India; the stamp/endorsement “Cancelled” put on his passport is quashed; respondents No.1 & 2 shall expunge any remarks/endorsement/entry that might have been made in the record/passport of the petitioner with respect to the aforesaid LOC; respondent No.3 shall communicate this order to respondent No.2; and officials/employees of respondent Nos.1&2 are restrained from preventing the petitioner from travelling abroad. In the event of petitioner returning to India and producing his passport before the Registrar (General) within the time of 2 months as aforesaid, the FDR/TDR deposited by him shall be returned otherwise it shall be forfeited.

Pending application(s), if any, shall also stands disposed of.”

5. The petitioner has also filed CM-5283-CWP-2023 in the said case for quashing the endorsement dated 15.03.2023 wherein entry had been made in his Passport as “Cancelled Without Prejudice”. Similarly, he filed CM-5292-CWP-2023 wherein he prayed for putting permanent restraint on respondent-Bank from depriving the petitioner from travelling

abroad since there were no criminal proceedings pending against him and no Look Court Circular was issued against him. It was also averred that his permanent residency was in danger. The Co-ordinate Bench on 23.03.2023 passed the following order:

“Counsel for the applicant-petitioner seeks to withdraw these applications with liberty to take steps to challenge the endorsement dt.15.03.2023 in an appropriate proceeding.

Granting liberty as sought for, all the three applications are dismissed as withdrawn.”

6. It is pertinent to mention that petitioner had also filed writ petition seeking similar relief. Thus, keeping in view the above, we are of the considered opinion that the action of respondent Nos.1 & 2 of stopping the petitioner from travelling abroad was totally uncalled for as the Look Out Circular had already been quashed. As noticed, the petitioner was a permanent resident of USA though his roots are of India. He has no criminal proceedings pending against him and therefore, to put any condition for his travel would be violative of Article 21 of the Constitution of India. The Apex Court in **Srichand P. Hinduja Vs. State through CBI, New Delhi 2002 AIR (SC) 401** had allowed the Hinduja Brothers who had been charge-sheeted in the Bofors Case to travel abroad subject to certain conditions since they were facing criminal litigation whereas in the present case there is no such disability.

7. In **M/s Bhaskar Industries Ltd. Vs. M/s Bhiwani Denim & Apparels Ltd., 2001 AIR (SC) 3625**, the Apex Court while dealing with the proceedings under Section 138 of the Negotiable Instruments Act, has held that dispensation of appearance of accused can be done especially when the accused resides or carry on business at a far distance.

8. In **TGN Kumar Vs. State of Kerala & others, 2011 AIR (SC) 708**, it was also held that dispensation of personal appearance can be done even by the Magistrate giving a role of caution that High Courts should not exercise powers since general directions had been issued regarding the appearance by the Kerala High Court in proceedings pertaining to Section 138 of the Negotiable Instruments Act, 1881.

9. Thus, keeping in view the above settled position, we are of the considered opinion that the endorsement which had been entered upon on the passport of petitioner wherein it has been stamped as “Cancelled Without Prejudice” is liable to be quashed. Respondent Nos.1 & 2 shall take adequate steps to remove the said entry at the earliest and as and when the petitioner wishes to go abroad, the said entry should not create an impediment in his travel plan, in any manner.

10. Writ petition is accordingly allowed in the above-said facts and circumstances. All pending application(s) also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

01.05.2023
sailesh

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes