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

CRM-M-37688-2021 (O&M)

Date of Decision:- 08.02.2023

RUPINDER KAUR

....Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vikas Bali, Advocate for the petitioner.

Mr. Hemant Aggarwal, Asstt. A.G. Punjab.

Mr. A.G.S. Dhillon, Advocate for the respondent no. 2.

AMARJOT BHATTI, J. (Oral)

CRM-1480-2023

The counsel for respondent no. 2 has filed an application under Section 482 Cr.P.C. for placing on record Annexure P-10.

For the reasons enumerated in the application, the same is allowed and the accompanied document i.e. Annexure P-10 is taken on record.

Application stands disposed of.

CRM-M-37688-2021 (O&M)

1. Petitioner - Rupinder Kaur has filed this petition under Section 482 Cr.P.C. for quashing of impugned order dated 18.08.2021 passed by learned Judicial Magistrate Ist Class, Jalandhar, Annexure P-6, whereby the trial Court has allowed the application filed by Rajdeep Singh - respondent no. 2 for release of Passport and Overseas Citizen of India card and quashing of impugned order dated 02.09.2021, Annexure P-9 passed

by learned trial Court, whereby the application for seeking permission to go abroad i.e. USA filed by respondent no. 2 has been allowed without hearing the petitioner/complainant and without imposing any kind of restriction/surety.

2. As per the facts of the case, the aforesaid impugned orders have been passed during the trial in FIR No. 45 dated 16.09.2020 under Sections 494, 498-A of IPC, Police Station Women, District Jalandhar. As per this FIR, a complaint was received through e-mail against Rajdeep Singh and others. It was alleged that Rupinder Kaur – complainant is an NRI, holding American Passport. She came to India on 17.08.2018. Since then, she is living in India along with her minor children. She got married with Rajdeep Singh on 21.03.2010 and their marriage was duly registered with Sub Registrar, Jalandhar-2. Out of this wedlock, a first child was born at Jalandhar and second daughter was born in USA. Both the children are under her care and custody. After sometime, there was change in the behaviour of her husband. She was working as a Government Teacher. He started raising objection when she used to go on her duty. During this period, she gave birth to a daughter. Her husband went to USA in November, 2013. After reaching America, the behaviour of her husband became cruel towards her. He was having illicit relation with local women. When she objected, she was beaten up. During this period, she gave birth to another daughter. In August 2018, she was brought to India in emergency on the pretext that his mother was ill. The husband delayed their return to USA on the pretext that they had to look after his ailing mother. The accused no. 3 often threatened to perform second marriage of Rajdeep Singh. After about 5-6 months, she noticed that accused no. 1 and 3 were absent from the matrimonial home. On 15.05.2020, she came

across a Marriage Certificate of Gurudwara and came to know that her husband had performed second marriage with accused no. 2 namely Karamjit Kaur. When she inquired from accused no. 1 and 3, she was given merciless beatings and was turned out of the matrimonial home along with her daughters. With these allegations, the matter was inquired and the present FIR was registered under Sections 494, 498-A of IPC.

3. Learned counsel for the petitioner argued that the respondent no. 2 was not joining the investigation. His look out circular was issued and the Airport Authority of India was informed. He was apprehended at IGI Airport, New Delhi and was detained on 20.06.2021. Thereafter, the challan was presented on 02.08.2021 and he was granted bail vide order dated 22.06.2021, which is Annexure P-3. Immediately after his release on bail, he filed application for the release of his Passport as well as his Overseas Citizen of India (OCI) card. The said application was allowed by the Magistrate vide impugned order dated 18.08.2021, which is Annexure P-6. Thereafter, he filed application seeking permission to go abroad i.e. USA for three months and the said application was allowed by passing impugned order dated 02.09.2021, which is Annexure P-9. It is argued that due to the conduct of respondent no. 2, the life of petitioner has been ruined. She is looking after her minor daughters single handedly. He has never provided any maintenance. Once he is permitted to go abroad, he will evade the process of law and the trial in the aforesaid FIR would be adversely effected. Apart from the aforesaid FIR, civil litigation is also going on. She has placed on record copy of plaint in a suit for permanent injunction, titled "Rupinder Kaur and others vs. Rajdeep Singh and others", which is Annexure P-1. It is argued that the trial Court has released the Passport and OCI card without appreciating the aforesaid facts

and permitted him to visit USA without imposing proper restrictions. Therefore, the impugned order dated 18.08.2021, Annexure P-6 and impugned order dated 02.09.2021, Annexure P-9 may be set aside.

4. On the other hand, learned counsel representing the respondent no. 2 argued that all the allegations levelled against respondent no. 2 are without any basis. He is ready to face the trial. He is a citizen of America and is working there. In case he is not permitted to go back to USA, his profession and source of livelihood would be ruined. It is further pointed out that the petitioner along with her daughters has already gone back to USA and has filed a case in the Superior Court of California – County of San Joaquin, claiming maintenance for the daughters under Child Support Scheme. He has already received notice. Copy of the same is Annexure P-10. In case, he is not permitted to go back to USA, he will not be in a position to contest the said litigation nor he will be able to provide maintenance to his daughters. It is argued that the present petition has been filed by the petitioner only to harass him. Therefore, the same may be dismissed.

5. I have considered the arguments and have gone through the record carefully. It is a matter of record that Rajdeep Singh is facing trial in FIR No. 45 dated 16.09.2020 under Sections 494, 498-A of IPC, Police Station Women, Jalandhar. Copy of the said FIR is Annexure P-2. It is further not disputed that Rajdeep Singh is a permanent resident of USA and he is working there. He is in possession of OCI card. The respondent no. 2, after his release on bail, filed application for the release of his Passport and OCI card and the said application was allowed by passing order dated 18.08.2021. The perusal of impugned order further shows that the aforesaid record was lying with the SHO, Police Station Women Cell

and it was not a part of the criminal trial file. It was not required by the police authorities for any purpose. Therefore, it was ordered to be released in his favour vide order dated 18.08.2021. Copy of the order is Annexure P-6. Considering the aforesaid factual position, I do not find any illegality or irregularity in the order passed by the learned Magistrate and the same is, accordingly, upheld.

6. The petitioner has also challenged the other order dated 02.09.2021, Annexure P-9 vide which respondent no. 2 was permitted to visit USA till 31.12.2021. As referred above, the respondent no. 2 is a permanent resident of USA and is running business there. His personal liberty and right to go back to the country where he is permanently residing cannot be curtailed. It cannot be ignored that the petitioner along with her two daughters has already gone back to America. It is further not disputed that one petition has been filed claiming maintenance on behalf of the children through County of San Joaquin against both the parents i.e. Rajdeep Singh, Rupinder Kaur – respondents under Child Support Scheme. The notice was served upon the respondent no. 2 Rajdeep Singh. The respondent no. 2 can contest the said litigation only if he is permitted to go back to the country where he is permanently residing. Therefore, in my opinion, the respondent no. 2 cannot be restricted or prevented from going back to USA.

7. However, as per impugned order dated 02.09.2021, he was permitted to go to USA till 03.12.2021 and that period has already lapsed. Therefore, the order dated 02.09.2021 has become infructuous. The respondent no. 2 can file fresh application seeking permission for going to USA before the trial Court which will be decided by the trial Court afresh, after considering the prevailing facts and circumstances of the case by

imposing the conditions as the Court may deem fit.

The petition is accordingly, disposed of.

Pending applications, if any, also stands disposed of.

08.02.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No