

269

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

CRM-M-34106-2023
Date of decision: 20.09.2023

Ankur Gupta

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manish Kumar Singla, Advocate and
Mr. Parminder Singla, Advocate for the petitioner.

Mr. Rajeev Anand, Advocate for the respondent-CBI.

VIKAS BAHL, J. (ORAL)

1. This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 01.04.2023 (Annexure P-6) to the extent that while allowing the application of the petitioner for extension of permission to travel to Bangladesh, the Special Judge (CBI), Haryana (at Panchkula) has imposed a condition that the petitioner would not request for further extension of his stay abroad beyond the period extended by the Court.

2. Learned counsel for the petitioner has submitted that in the present case, FIR under Sections 120-B read with Sections 420, 467, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 has been registered at Police Station CBI-EO-1, New Delhi and in the same, charges have been framed vide order dated

05.02.2018. It is further submitted that the prosecution had moved an application under Section 319 Cr.P.C. and the trial Court, vide order dated 14.03.2023, had partly allowed the said application and the additional accused were summoned. It is contended that one Sangeeta Trehan Chauhan has filed a petition bearing No.CRM-M-19779-2023 challenging the order of summoning her under Section 319 Cr.P.C. and the Coordinate Bench of this Court, vide order dated 21.04.2023, was pleased to issue notice of motion in the same and also granted stay of operation of the order till the next date of hearing i.e., uptill 06.07.2023. It is further contended that the said interim order is continuing till date and on account of the said stay order, no effective hearing has taken place after the passing of the said order before the trial Court. It is argued that the petitioner is the sole bread winner of his family and is employed in Bangladesh and was granted permission to travel Bangladesh from 31.03.2022 to 30.09.2022 and thereafter, again from 01.10.2022 to 31.03.2023 vide order dated 19.09.2022 (Annexure P-5). It is further argued that since, in the said order, a condition was imposed that the petitioner would appear on each and every date of hearing before the trial Court, thus, the petitioner has been appearing on each and every date. It is also submitted that thereafter, the petitioner had applied for extension of permission to travel to Bangladesh and the Special Judge (CBI), Haryana at Panchkula, vide order dated 01.04.2023, after taking into account the fact that the petitioner has not misused the previous permission granted and that there was no apprehension of him evading the Court proceedings, the said application was allowed and extension was granted from 01.04.2023 to 30.09.2023. It is also contended that however in the said order, a condition

was imposed to the effect that the petitioner would not request for further extension of his stay abroad beyond the period extended by the Court and it is the said condition which the petitioner is aggrieved of. It is argued that the right to travel abroad is a constitutional right of the petitioner enshrined under Articles 19 and 21 of the Constitution of India and restraining the petitioner from even making a request before the Court for permission to go abroad/extension of permission, is illegal and against law. It is further argued that the right of an individual to move an application cannot be barred or restrained and it is only after the application is moved and on the basis of merits of the same, a decision is to be taken after considering the facts and circumstances of the case. It is also submitted that in the present case, the proceedings have been stayed and the petitioner has never violated the terms and conditions which had been imposed by the trial Court while granting permission to the petitioner to go abroad. It is thus, prayed that the condition in the order which has been impugned in the present case, be set aside.

3. Learned counsel appearing on behalf of the respondent-CBI has prayed that in case any fresh application is filed by the petitioner then the Court would also consider the plea raised by the respondent-CBI before passing any order.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. It is not in dispute that on an application moved under Section 319 Cr.P.C., certain additional accused were summoned and one Sangeeta Trehan Chauhan had filed a petition bearing No.CRM-M-19779-2023 and

vide order dated 21.04.2023, the Coordinate Bench of this Court while issuing notice of motion, was pleased to stay the impugned order therein till the next date of hearing and the said order is continuing till date and the petitioner had applied for permission to travel to Bangladesh which was granted vide order dated 24.03.2022 from 31.03.2022 to 30.09.2022. Vide order dated 19.09.2022, an application filed by the petitioner to go abroad to Bangladesh for a period of six months w.e.f. 01.10.2022 to 31.03.2023 was also allowed. The relevant portion of the said order dated 19.09.2022 is reproduced hereinbelow:-

“5. As per record the applicant was earlier granted permission on two occasion to visit abroad and on that occasions he has abide by the terms and conditions imposed by this Court. He has not misused the occasion which was given to him for visiting abroad. Therefore, there is no apprehension of running away from the Trial Court proceedings. According, the application in hand is hereby allowed and necessary permission is granted to the applicant-accused to travel Bangladesh for the period w.e.f. 01.10.2022 to 31.03.2023 subject to furnishing undertaking in the shape of affidavit to the effect that that he will appear before the court on each and every date of hearing and further on furnishing surety bond in the shape of FDR of Rs. 2 lacs. Papers be tagged with main case.

*Pronounced in open Court:
19.09.2022*

*Sd/-(Sudhir Parmar)
Special Judge (CBI)
Haryana at Panchkula.”*

6. A perusal of the above order would show that it was recorded by the Special Judge (CBI), Haryana at Panchkula that the petitioner had previously travelled abroad on two occasions and on both the occasions,

abided by the terms and conditions imposed by the trial Court and had not misused the permission granted and thus, there was no apprehension of his running away from the trial Court proceedings. The petitioner was directed to file an affidavit to the effect that he will appear before the Court on each and every date of hearing and further to furnish surety bond in the shape of FDR of Rs.2 lacs. A perusal of another order passed on even date i.e., on 19.09.2022 would show that the petitioner had filed an affidavit as well as furnished surety bond in the shape of FDR of Rs.2 lacs in compliance of the abovesaid order. The petitioner had filed a subsequent application for seeking extension of permission to go abroad to Bangladesh for a period of six months w.e.f. 01.04.2023 to 30.09.2023 and the same was also allowed but a condition was imposed to the effect that the petitioner shall not request for further extension of his stay abroad beyond the period extended by the Court. The relevant portion of order dated 01.04.2023 passed by the Special Judge (CBI), Haryana at Panchkula is reproduced hereinbelow:-

*“5. Perusal of the file reveals that the applicant was earlier granted permission on certain occasion to visit abroad and on that occasions he has fulfilled all the terms and conditions imposed by this Court and has not misused the conditions. Therefore, there is no apprehension of running away from the proceeding of the court. According, the application in hand is hereby allowed and the period of stay of applicant-accused at Bangladesh is extended from 01.04.2023 till 30.09.2023 with the direction to the applicant-accused to appear before the court as and when required. **It is made clear that the applicant- accused shall not request for further extension of his stay abroad beyond the period extended by this Court and accused will abide by the rules of foreign country. There is no***

need to furnish the fresh surety bond, as the FDR amounting to Rs.2,00,000/- has already been placed on record.

Pronounced in open Court:

Sd/-(Sudhir Parmar)

01.04.2023

Special Judge (CBI)

Haryana at Panchkula.”

7. The petitioner is rightly aggrieved with the said condition which has been highlighted in the abovesaid order. It is a matter of settled law that no person can be barred from applying for permission to go abroad or for seeking further extension if permission has been granted and it is only when the application is filed for permission to go abroad or for extension then it is in the facts and circumstances which prevail at that time, after hearing the concerned parties, the Court is required to either accept the application or reject the same. The condition imposed in the impugned order if sustained would take away the right of the petitioner to apply for permission to go abroad or to seek further extension of his stay abroad which would be infringement of the fundamental rights of the petitioner and thus, the said condition is not sustainable. In the case of Sangeeta Trehan Chauhan, who was summoned under Section 319 Cr.P.C., operation of the said order had been stayed and the said interim order is still in force and thus, no effective proceedings have taken place before the trial Court and the matter is now stated to be pending for 07.10.2023. It is also not in dispute that the petitioner has not violated any of the terms and conditions imposed by the trial Court when he travelled abroad and on having been granted the permission on three earlier occasions, the petitioner has also complied with all the conditions which were imposed by the Court.

8. Keeping in view the abovesaid facts and circumstances, the

present petition is allowed and the condition imposed in the order dated 01.04.2023 to the effect that "it is made clear that the applicant shall not request for further extension of his stay abroad beyond the period extended by this Court" is set aside and liberty is granted to the petitioner to move an application for permission to go abroad/extension of his stay abroad before the concerned Court and the said application would be considered, in accordance with law, after hearing all the parties concerned including the petitioner and the CBI, in accordance with law.

9. It is made clear that this Court has not opined on the merits of any such application which would be filed and the trial Court, before whom the said application is moved, would consider the same independently and in accordance with law after considering the facts and circumstances which would prevail at that time and after hearing all the parties concerned.

20.09.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**