

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

134+288

CRM-M-38170-2023 (O&M)
Date of decision: 21.08.2023

PRAMOD KUMAR

...Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM : HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Manjeet Singh, Advocate
for the petitioner.

Mr. Aditya Kapoor, AAG, Punjab.

NIDHI GUPTA, J.(ORAL)

CRM-34539-2023

This is an application filed under Section 482 Cr.P.C. for placing on record written statement on behalf of respondent No.2.

For the reasons stated in the application, the same is allowed.

Written Statement on behalf of respondent No.2 is taken on record.

CRM-M-38170-2023

1. Prayer in this petition is for quashing of impugned order dated 25.7.2023 (Annexure P-16) in FIR No. 07 dated 25.2.2022 under Sections 406 and 498-A IPC, registered at PS Women, Patiala, District Patiala, passed by Id. Trial Court whereby the application moved by the petitioner to visit Netherlands and for exemption from personal appearance, has been dismissed.

2. On the last date of hearing, the following order was passed:-

“Prayer in this petition is for quashing of impugned

order dated 25.7.2023 (Annexure P-16) in FIR No. 07 dated 25.2.2022 under Sections 406 and 498-A IPC, registered at PS Women, Patiala, District Patiala, passed by ld. Trial Court whereby the application moved by the petitioner to visit Netherlands and for exemption from personal appearance, has been dismissed.

Notice of motion.

At the asking of the Court, Mr. Madhu Sharma, AAG Punjab accepts notice on behalf of the respondent-State.

At this stage, Mr. Rakesh Gupta, Advocate has put in appearance and filed Vakalatnama on behalf of the respondent no.2/complainant, which is taken on record. Respondent no.2/complainant along with minor child is present in Court.

Ld. Counsel for the petitioner inter alia submits that marriage between petitioner and respondent no.2 was solemnized on 7.3.2019 and a child was born out of their wedlock. Respondent no.2 made a complaint dated 10.7.2021 against the petitioner and all his family members on the basis of which FIR No. 07 dated 25.2.2022 (Annexure P-1) was registered under Sections 406/498-A IPC at PS Women, Patiala. In the said FIR after investigation, police found that all the family members of the petitioner were innocent, however, the petitioner was sent for trial in which he was ordered to be released on regular bail by the trial Court vide order dated 2.1.2023 (Annexure P-3).

Ld. counsel for the petitioner submits that the petitioner is an Engineering graduate in the employment of renowned IT Company Infosys. Infosys has got an important project with Slater N.V. at Netherlands and vide assignment dated 19.5.2023 petitioner was asked by Infosys to work in a project namely STATMSWT. It is submitted that in pursuance of the same Infosys started Entry and Residence procedure on behalf of the petitioner on 23.5.2023 and the concerned Ministry of Netherlands has granted work permit visa vide letter dated 31.5.2023, translated copy of which is Annexure P-6. The

employer of the petitioner sought consent of the petitioner; whereafter the petitioner sought permission from ld. Trial Court to go to Netherlands for a period of two years by way of application dated 13.6.2023 (Annexure P-7) along with an undertaking that he shall have no objection if the prosecution evidence is recorded in his absence and the cross-examination is conducted by his counsel. It is submitted that it is this application which has been dismissed by the learned trial court vide the impugned order dated 25.7.2023.

Ld. Counsel submits that though, in the impugned order, the learned trial court has directed that the prosecution evidence be completed in one month, however, respondent No.2 is deliberately trying to delay the matter. It is pointed out that though respondent no.2 appeared on 13.6.2023 but she did not complete her examination-in-chief; and in fact, on 14.6.2023 itself respondent no.2 filed application (Annexure P-9) for issuance of directions to seize/attach the passport of the petitioner and also to issue look out notice to the concerned Embassy against the petitioner. Ld. Counsel contends that malafide intent of the respondent is evident from the above act of respondent No.2.

It is submitted that on 13.6.2023 ld. Trial Court had adjourned the case to 6.7.2023 for further examination-in-chief of the respondent no.2 as well as for reply to the application Annexure P-7. However, on 6.7.2023, respondent no.2 did not appear as recorded in the Zimni order dated 6.7.2023 (Annexure P-11); whereafter the case was adjourned to 11.7.2023 for recording further examination-in-chief and for arguments on the application. However, as is evident from the Zimni order dated 11.7.2023 (Annexure P-12), respondent no.2 did not appear on 11.7.2023 as well, and the matter stood adjourned to 13.7.2023. Though respondent no.2 appeared on 13.7.2023 but could not be examined at the request of ld. APP and the matter was adjourned to 18.7.2023 for recording the

statement of the respondent no.2. Again on 18.7.2023, respondent no.2 did not appear and the case was adjourned to 25.7.2023 vide order Annexure P-15.

Ld. Counsel for the petitioner submits that on said date despite presence of the petitioner and his counsel, evidence of respondent no. 2 was deliberately avoided in order to protract the trial. It is submitted that vide impugned order dated 25.7.2023 (Annexure P-16) ld. Trial Court dismissed the application (Annexure P-7) of the petitioner seeking permission to visit Netherlands and for exemption of his personal appearance, without considering the facts of the case especially the fact that it is lifetime opportunity for the petitioner which will boost his career and will be financially beneficial especially for the welfare of the minor child and respondent no.2.

It is further submitted that vide impugned order dated 25.7.2023 though the ld. Trial Court directed the prosecution to conclude the evidence within one month and even the case was fixed for 28.7.2023 for further examination-in-chief of respondent no.2, however, even on the said date respondent no. 2 could not be examined as the ld. APP was on leave.

Ld. Counsel for the petitioner submits that though initially the petitioner was given four weeks' time to give his consent, however, as the petitioner was unable to get the permission from the trial court in the said period, the employer granted another four weeks' time to him to give his consent which period would expire on 31.8.2023. It is submitted that accordingly the petitioner will be required to leave for Netherlands by 31.8.2023. Ld. Counsel for the petitioner also submits that besides lodging the aforesaid FIR, respondent no.2 has also filed a complaint under the Protection of Women from Domestic Violence Act, 2005, as also another petition under Section 125 Cr.PC.

Ld. Counsel for the petitioner reiterates that petitioner is

seeking exemption from personal appearance and also undertakes that he shall have no objection if the prosecution evidence is recorded in his absence and cross-examination is conducted by the counsel for the petitioner.

Ld. Counsel for complainant/respondent no.2 submits that petitioner is earning at least Rs. 1 lac per month, however, nothing is being paid by way of maintenance to the complainant and their minor child.

In response, ld. Counsel for the petitioner admits that the petitioner is earning about Rs.1.5 lakhs per month and submits that the petitioner is very mindful of his responsibility towards his minor child. And to show his bona fide the petitioner is willing to make an online deposit of a reasonable amount per month, as determined by this Court, in the account of the respondent. Ld. Counsel for the petitioner further undertakes to immediately return in case the Trial Court deems/ directs that the petitioner's presence is necessary on any date. Ld. counsel for the petitioner further submits that in case petitioner is granted permission to visit Netherlands, as prayed for, petitioner is ready and willing to give an undertaking before the trial Court to return back to India, after the expiry of two years so granted, and surrender his Passport on or before 1.9.2025.

At this stage, ld. Counsel for the respondent no.2 undertakes to provide bank account details of complainant/respondent no.2 to the counsel for the petitioner during the course of the day for the purpose of receiving maintenance amount. Ld. Counsel upon instructions from respondent No. 2, who is present in Court with her minor child, submits that respondent will be satisfied if an amount of Rs.30,000/- is deposited into her account every month by the petitioner.

I have heard ld. Counsel for the parties.

In view of the facts and circumstances as noticed above,

as also the submissions made on behalf of the parties, it is directed that the petitioner will bring a Demand Draft in favour of respondent No.2 for a sum of Rs.1,80,000/- (Rs. One Lac, and Eighty Thousand only), as pre-deposit for the next six months (from 1.8.2023 till 31.1.2024 @ Rs. 30,000/- per month), on the next date of hearing. Thereafter, upon receipt of particulars of bank account of respondent no.2, the petitioner is directed to and undertakes to make an online deposit of Rs.30,000/- per month in the account of respondent No.2 by the 7th day of each calendar month.

Adjourned to 16.8.2023 for further consideration.”

3. On 16.08.2023, the case was adjourned to 21.08.2023.
4. Today, Mr. Virender Kumar, Advocate has put in appearance on behalf of respondent No.2 and filed his *Vakalatnama*, which is taken on record.
5. In compliance of order dated 07.08.2023 passed by this Court, learned counsel for the petitioner has brought demand draft amounting to Rs.1,80,000/-. Learned counsel further submits that petitioner had also already deposited Rs.30,000/- on 08.08.2023 in the account of respondent No.2-wife. It therefore, transpires that payment in advance of 07 months i.e. up to 29.02.2024 stands deposited at the rate of Rs.30,000/- per month and learned counsel for respondent No.2 does not dispute this.
6. In reply filed by respondent No.2, the prayer made in this petition has been opposed by reiterating the allegations made by her before the Courts below and which have already been noticed by this Court in the order dated 07.08.2023.
7. I have heard learned counsel for the parties.
8. In *Utkarsh Pahwa v. Assistant Director (PMLA), Directorate of Enforcement: 2019(1) Law Herald 870* Coordinate Bench of this Court

observed as under-

"The law governing the question of grant of permission to the petitioner for travelling abroad during the pendency of the trial has been elaborately discussed by this Court in authority of Paramjit Kaur v. State of Punjab's case (supra) in which reliance was placed on Srichand P. Hinduja v. State through CBI, New Delhi 2002(3) RCR (Criminal) 186 (SC), Arun Kapoor v. State of Haryana 2004(4) RCR (Criminal) 594 (P&H), Brij Bhushan Singal v. Central Bureau of Investigation 1994(3) RCR (Criminal) 498 (P&H), Anjal Kumar @ Angel Kumar v. State of Punjab 2010(1) RCR (Criminal) 201 and Naginder Singh Rana v. State of Punjab 2004(3) RCR (Criminal) 912 and on the basis of the said authoritative pronouncements of the Hon'ble Apex Court and this Court, it can be safely concluded that in normal circumstances, permission can be granted to the petitioner to travel abroad being his fundamental right to travel abroad, but the conditions are to be imposed for regulating and securing his presence during the trial"

9. Keeping in view the peculiar facts and circumstances of the case coupled with over-all welfare of the parties, the present petition is allowed and impugned order dated 25.7.2023 (Annexure P-16) in FIR No. 07 dated 25.2.2022 under Sections 406 and 498-A IPC, registered at PS Women, Patiala, District Patiala, passed by learned trial Court, declining the request of the petitioner to visit Netherlands as also declining his exemption from personal appearance, is set aside; and petitioner is allowed to go to Netherlands from 31.08.2023 to 31.08.2025 with the express conditions that:-

- (i) The petitioner will deposit a sum of Rs.5 lakhs with the trial Court/Illaq Magistrate which will be kept in FDR.
- (ii) The petitioner will submit an undertaking before the trial

Court that in case he fails to return to India on or before 02.09.2025 and appear before the trial Court, the amount of Rs.5 lakhs shall stand forfeited to the State, unless extension is sought with cogent reasons.

- (iii) The petitioner will give complete details of his email ID/mobile phone, to be used in Netherlands, details of the office, details of his postal address, where he is going to stay, to the Investigating Officer and in case of any change in any of the details, he will further intimate it to the Investigating Officer.
- (iv) During this time, the petitioner is further directed to continue depositing an amount of Rs.30,000/- per month into the account of respondent No.2 by 7th day of each calendar month.
- (v) The proceedings before the trial Court will continue in absence of the petitioner and his counsel will appear on his behalf, when the charges will be framed or at a subsequent stage, when the prosecution evidence will be recorded and for that purpose, the trial Court will treat the presence of his counsel as presence of the petitioner, who will not dispute identity of prosecution witnesses. The petitioner shall also furnish an undertaking before the Trial Court that he shall have no objection if prosecution evidence is recorded in his absence and cross-examination is conducted by the counsel for the petitioner before the Trial Court.

- (vi) On his return from Netherlands, the petitioner shall surrender his passport before the trial Court on or before 02.09.2025, failing which he will be liable to be proceeded against in accordance with law.
- (vii) In case the petitioner, during period of his job, has to come to India, he will again mark his presence before the Investigating Officer and during his period of stay in India, if there is any date before the trial Court, he will appear in person before the Court.

11. Allowed subject to the above-said conditions.

August 21, 2023
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(NIDHI GUPTA)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No