

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

288

CRM-M-41217-2023
Date of Decision: 22.08.2023

Sahil Arora
...Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Prateek Gupta, Advocate,
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

VIKAS SURI, J.

1. Challenge in this petition filed under Section 482 Cr.P.C. is to the order dated 08.08.2023 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Amritsar, whereby the application moved by the petitioner seeking permission to visit Spain was declined.
2. The brief background of the present case is that the petitioner is an accused facing trial in case FIR No.335 dated 11.09.2014, under Section 380, 427, 447, 120-B, 420, 467, 468, 471 IPC, registered at Police Station A-Division, Amritsar. The petitioner was not named in the FIR but was nominated later on, on the basis of a disclosure statement. It is pleaded that final report under Section 173 Cr.P.C. was submitted before the Court on 29.01.2020 and charges were framed on 29.03.2023.

3. It is submitted that the petitioner is working as Assistant Director-Sales in Max-Digi InfoTech Pvt. Limited and is associated with the said company for the last five years. The employer company of the petitioner has offered an incentive/business trip to Spain from 11.08.2023 to 31.08.2023, to three of its employees, including the petitioner, who are stated to have done exceptionally well within their fields. The employer company of the petitioner has given sponsorship letter dated 11.07.2023 (Annexure P-1), wherein it has been mentioned that all expenses during the Spain trip for the three employees referred to above will be borne by the company. It has also issued the requisite certificate for Visa processing. The Schengen Visa (Annexure P-2) issued by the Embassy of Spain has been granted and affixed on the passport of the petitioner, which is valid from 11.08.2023 to 24.09.2023. Thus, the petitioner filed the application seeking permission to visit Spain from 01.08.2023 to 31.08.2023.

4. The trial Court while declining the aforesaid application has observed that the case is fixed for prosecution evidence and the ground to visit abroad cannot be considered as necessity and there are chances that the applicant may not return to India if he is allowed to visit abroad.

5. Upon notice of motion having been issued, learned State counsel sought accommodation to complete instructions and argue the matter.

6. On resumed hearing today, learned State counsel, on instructions from ASI Jeewan Singh, submits that there is no need to file

formal written reply as the facts as evident on record, are not in dispute. Though the present petition has been opposed by the learned State counsel but he has not been able to refute that the petitioner has been regularly appearing before the investigating agency and then before the trial Court on each and every hearing of the case for the last more than nine years. The FIR in question was registered on 11.09.2014 and thereafter, final report under Section 173 Cr.P.C. (*challan*) was submitted and charges stand framed against the petitioner as noticed above. It is fairly submitted that the petitioner is not involved in any other case nor has he ever misused the concession of bail.

7. Heard learned counsel for the parties and with their able assistance perused the paper-book.

8. A perusal of the application dated 02.08.2023 (Annexure P-3) moved by the petitioner seeking permission to go abroad would show that a condition was imposed upon the petitioner while granting bail that he will not leave the country without prior permission of the Court. It is not in dispute that the petitioner has been regularly appearing in the matter since his implication in the FIR registered in the year 2014. The petitioner is stated to be working at Noida and staying at Delhi i.e. the address given in his Aadhaar Card, copy of which is appended along with the petition and is a permanent resident of Amritsar. The FIR in question arises out of a family dispute, wherein the petitioner has been nominated subsequently and was not named in the FIR.

9. The Apex Court in *Satish Chander Verma vs. Union of India* (2019) SCC Online SC 2048, while elucidating the right of a citizen to travel abroad, held as under:-

“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 (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 (1958) which are as follows:

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

10. The petitioner had also undertaken before the trial Court that he will return back on 01.09.2023 and shall remain present before the Court on date fixed i.e. 13.09.2023. A similar undertaking, on affidavit, has been given before this Court as well, in para Nos.5 and 11 of the petition. The averments made in the instant petition have not been denied. The petitioner has been regularly appearing before the Investigating Agency and thereafter, before the trial Court since his nomination in the FIR noticed above and he has been doing so even while working at Noida and staying at Delhi, hence it does not appear that the petitioner may abscond. Moreover, nothing has

been discussed by the trial Court for arriving at an opinion that there are chances of the petitioner fleeing away from its jurisdiction if he is allowed to visit abroad.

11. It is also noticed that the permission sought to travel abroad is not a self-financed trip but the opportunity the petitioner has earned along with two other employees by performing outstandingly in the financial year 2022-23 in the form of an incentive/business trip to Spain from 11.08.2023 to 31.08.2023 from his employer company. The confirmed business class tickets of the above referred three employees, which includes the name of petitioner is available on record as Annexure P-5. A perusal thereof shows that the return schedule is for 31.08.2023, reaching India on 01.09.2023.

12. The Criminal Courts have to take extreme care in dealing with grant of permission to travel abroad where a condition has been imposed while granting bail not to leave India without the permission of the Court. Law presumes an accused to be innocent till he is declared guilty. As such, he is entitled to all the fundamental rights guaranteed to him under the Constitution. At the same time, interest of the society has also to be protected. The Court has to strike a fine balance between personal liberty of the accused guaranteed under Article 12 of the Constitution, investigation rights of the concerned investigating agency and fair trial. The Criminal Court has to consider possibility of the accused if released on bail, fleeing justice and thereby thwarting the course of justice, as also the individual rights of the accused. The Court has to consider antecedents of the person

accused or suspected of commission of the offence, nature of the offence he is said to have committed, necessity of his presence for investigation/trial, duration of the same and such other relevant factors. The Court has to determine whether notwithstanding the personal liberty of the accused, interest of justice requires i.e. right of movement should be restricted during the pendency of the case.

13. In the present case, the proposed itinerary of the petitioner does not affect the trial as the same is fixed for 13.09.2023 and the petitioner is scheduled to return to India on 01.09.2023. In the factual backdrop of this case and in light of the aforesaid, I am of the considered opinion that to put an absolute embargo on the travel of the petitioner to travel abroad till conclusion of trial would amount to an unreasonable restriction on his fundamental right to free movement including his right to go abroad, more particularly when such activity is in the course of petitioner's employment.

14. In view of the above discussion, the consideration that weighed with the trial Court, in the absence any material to substantiate the same, cannot be sustained. Resultantly, the impugned order dated 08.08.2023 (Annexure P-4) is quashed and permission is granted to the petitioner to travel abroad for the purpose of the trip to Spain, as sponsored by his employer.

15. It is, however, made clear that the petitioner shall remain bound by his undertaking given in the instant petition to return to India on 01.09.2023 and to mark his presence before the trial Court on the next date

fixed i.e. 13.09.2023. This order grants only a one time permission to travel abroad as indicated above and does not alter the conditions contained in the order granting bail to the petitioner.

16. The instant petition stands allowed in above terms.
17. A copy of this order be given *dasti* to the learned counsel for the petitioner under the signatures of the Special Secretary of this Bench.

August 22, 2023
Harish

(VIKAS SURI)
JUDGE

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