

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-55375-2022

Date of Decision: January 20, 2023

Sukhwinder Kaur

.....Petitioner

Versus

State of Haryana and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. G.S. Duhan, Advocate for the petitioner.
Mr. Ravinder Singh, AAG, Punjab.
Mr. Nikhil Ghai, Advocate for respondents No.2 & 3.

HARKESH MANUJA, J (ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of an order dated 30.09.2022 (P-10) passed by the Court of JMIC, Khanna; whereby application made by the petitioner for seeking permission to go abroad stands dismissed.

Briefly stated, the facts of the case are that a complaint came to be filed at the instance of one Anil Jindal against Paramjit Singh Duggal and Harpal Gulati alleging forgery of an agreement to sell resulting into registration of FIR No. 125 dated 14.07.2011 under Sections 420, 120-B, 182, 211, 201 IPC, registered at Police Station City Khanna, District Ludhiana. Later, after thorough investigation, it was found that in fact complainant Anil Jindal with the aid of few others played fraud upon Paramjit Singh Duggal and Harpal Gulati, resultantly, they both were transposed as complainants thereby implicating Anil Jindal as an accused besides few others. On completion of investigation, challan was filed before the trial Court on 19.11.2014. In the meanwhile, aforementioned Paramjit

Singh Duggal and Harpal Gulati filed a suit for specific performance based on an agreement to sell dated 12.10.2009 against Anil Jindal and others; wherein alienation of suit property was ordered to be stayed by the trial court during the pendency of the suit, however, a portion of the subject matter of the suit property was sold in favour of the present petitioner, thereby indicting her as well in the aforementioned criminal proceedings, alleging fraud and forgery at her instance. It may be pointed out here that the aforesaid civil suit came to be dismissed by the trial Court and appeal arising therefrom is pending consideration before the appellate Court. Later on, vide supplementary report dated 19.10.2019, the petitioner was found to be innocent by the investigating agency.

Pending consideration, the aforesaid reports submitted by the investigating agency before the trial Court, the petitioner moved an application dated 02.09.2022 so as to seek permission to visit abroad (Canada) in order to meet her daughter, namely, Amandeep Kaur, who allegedly gave birth to twin sons on 27.08.2022. The aforesaid application filed at the instance of petitioner came to be dismissed vide order dated 30.09.2022, which has now been impugned in the present petition.

Learned counsel for the petitioner submits that the petitioner has already been declared innocent by the investigating agency and she has no role to play in the alleged offence and she being a law abiding citizen may thus, be permitted to visit her daughter in her need of hour. For the said purpose, learned counsel also relies upon judgments passed by this Court in **CRM-M-41608-2018 tilted as Paramjit Kaur Vs. State of Punjab**, decided on 28.09.2018, **CRM-M-3304-2021, titled as Amit**

Sudershma Lodha Vs. State of Haryana, decided on 09.11.2021 and **CRM-M-41073-2022** tilted as **Sarthak Tandan Vs. State of Punjab**, decided on 27.09.2022.

On the other hand, prayer made in the petition has been opposed by respondent No.2-complainant while submitting that there is serious apprehension of petitioner absconding the process of law as one of her close relatives has also been declared as a proclaimed offender in one another case.

I have heard learned counsel for the parties and gone through the paper-book as well as case law cited at the Bar.

Petitioner has sought permission to go abroad on account of her family exigencies, as her daughter who is permanently residing in Canada, has given birth to a twin and her presence is necessitated there to take care of her daughter and newborn babies. Had there been no pending proceeding, it is her fundamental right to visit her immediate family and be with them at the time of such extreme necessity, whether in India or abroad. In such circumstances, the right to visit abroad has to be subsumed within right to life as enshrined under Article 21 of the Constitution of India. The aforesaid view can also be derived from the observations made by the Hon'ble Supreme Court in **Satish Chandra Verma Vs. Union of India and others**, 2019 (2) SCT 741 and relevant extract therefrom is reproduced hereunder for reference:-

“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 and Another (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 which are as follows:

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

At the same time, it cannot also be ignored that no right is absolute and necessary conditions has to be imposed to enforce her presence as and when required to fulfill the obligations before Id. Trial Court. Therefore, in accordance with exposition of law in various aforementioned judgments rendered by the Hon’ble Supreme Court as well as this Court, the petitioner shall be allowed to visit abroad to join her daughter to fulfill her parental duties, however aforesaid permission granted to her, has to be adequately regulated so as to secure and procure the presence of the individual facing the trial or Court proceedings.

In view of the discussion made hereinabove, prayer made in the present petition is allowed. Impugned order dated 30.09.2022 is hereby set aside, granting permission in favour of petitioner to visit her daughter in Canada for a period of three months. Period of 03 (three) months shall commence from the date of grant of VISA in favour of petitioner regarding which she undertakes to move an application within a period of 07 days

from today. In case by the time, the stage of consideration of framing of charges reaches, the aforesaid shall have no meaning in the eyes of law. It is, however, made clear that the aforesaid permission shall be subject to compliance of following conditions:-

- (i) *Petitioner shall deposit with the concerned Illaqa Magistrate/Trial Court all the original documents pertaining to the ownership of the 'property' and the same shall be accepted by the concerned Court only after it is satisfied that it is she who own and possess the 'property' as also that the same is free from all encumbrances;*
- (ii) *Petitioner shall also furnish an undertaking before the concerned Illaqa Magistrate/Trial Court that in case, the petitioner fails to return to India to face her trial the 'property' be forfeited and sold as also that its proceeds be equally divided between the State and respondent No.2;*
- (iii) *the petitioner, at all times, shall furnish/update before the concerned Illaqa Magistrate/Trial Court details and full particulars of person(s) residing in Sunder City, Samarala Road, Khanna, District Ludhiana who would be authorized on her behalf to receive any process/notice from the Court while she is in Canada.*

It is also made clear that in view of specific instructions from the petitioner through the learned counsel representing her, proceedings before the trial Court as regards consideration upon the final investigation report filed under Section 173 (2) Cr.P.C. or under Section 173 (8) Cr.P.C., if any, shall continue in her absence, but, in presence of her counsel and the petitioner shall not raise objection about any prejudice, in this regard.

It is further made clear that the petitioner shall come back within the time specified and join the proceedings before the trial Court, as and when required to do so, in accordance with law.

January 20, 2023
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no