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2024:PHHC:052776

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11956-2024 (O&M)
DECIDED ON: 16.04.2024

MOHAN SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. R.S. Cheema, Sr. Advocate with Ms. Sumanjit Kaur, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

Mr. Prateek Gupta, Advocate, for the complainant.

SANDEEP MOUDGIL, J

CRM-11773-2024

Prayer in the present application is for impleading Sukhdev Singh son
of Late Banta Singh as respondent No.2.

In view of averments made in the present application, the same is
allowed and the applicant-Sukhdev Singh is ordered to be impleaded as respondent
No.2

Registry is directed to make necessary corrections in the memo of
parties.

CRM-16062-2024

Prayer in the present application is for placing on record reply to the
application seeking impleadment of Sukhdev Singh as respondent No.2 as well as
rejoinder to the reply file on behalf of respondent No.2.

In view of averments made in the present application, the same is allowed. Reply to the application seeking impleadment of Sukhdev Singh along-with rejoinder to the reply filed on behalf of respondent No.2 is taken on record.

CRM-11772-2024

Application is allowed, as prayed for.

Annexures R-1 to R-15 are taken on record, subject to all just exceptions.

CRM-11774-2024

Prayer in the present application is for placing on record reply on behalf of respondent No.2.

Application is allowed, as prayed for.

Reply filed on behalf of respondent No.2 is taken on record, subject to all just exceptions.

CRM-M-11956-2024

1. The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked by the petitioner seeking permission to visit abroad i.e. Canada and Papua New Guinea w.e.f. 06.03.2024 to 06.10.2024 for the purpose of maintaining/renewal of permanent resident status of the said countries.

2. The case of the petitioner is that he has been falsely implicated in FIR No. 59, dated 22.06.2017, under Sections 420 and 120-B IPC registered at Police Station Division No.3, Ludhiana. The allegations in the afore-said FIR are against the two brothers of the petitioner for preparing three forged agreements to sell for the purpose of using them in proceedings under Senior Citizen Act initiated by late Banta Singh and the petitioner had put his signatures as consenting party in one of

those agreements. The petitioner has already filed a petition i.e. CRM-M-49687-2017 seeking quashing of the afore-said FIR, challan and charges, which is pending adjudication before this Court for 24.04.2024.

3. An application filed by the petitioner seeking permission to travel abroad w.e.f. 22.02.2024 to 21.08.2024 has been dismissed by learned Judicial Magistrate Ist Class, Ludhiana vide order dated 27.02.2024 (Annexure P-1) simply on the ground that he has taken the court proceedings for granted and applications to go abroad are being moved one after another without any cooling off period.

4. Mr. R.S. Cheema, Sr. Advocate assisted by Ms. Sumanjit Kaur, Advocate for the petitioner has contended that the petitioner is a permanent resident of Canada and Papua New Guinea and he has not been able to visit Papua New Guinea for more than a year whereas, the stay of the petitioner is continuously required in the said country for maintaining his permanent resident status. He has placed reliance upon a letter dated 16.11.2016 (Annexure P-3). It is further contended by learned Senior counsel that for maintaining/renewal of status of permanent resident of Canada, the petitioner is required 730 days of stay in Canada within five years period of his Permanent Resident status whereas his stay in Canada is only for 555 days till date against the mandatory requirement of 730 days. It is submitted on behalf of the petitioner that since 2018, the petitioner has been seeking permission from trial Court for travelling to Canada and Papua New Guinea but for limited periods. He was held up in India for a prolonged period during the COVID period and could not travel abroad.

5. It has been contended by learned State counsel that earlier also the petitioner was granted permission by the trial Court to visit abroad and lately permission was granted from 21.11.2023 to 31.01.2024. He further contends that till

the expiry of the cooling period of six months from the last date of return to India i.e. before 30.07.2024, the petitioner is not entitled for grant of permission to again visit abroad.

6. He further submits that petitioner has also filed a quashing petition bearing No.CRM-M-49687-2017 before this Court, which is fixed for 24.04.2024.

7. Before adjudicating the present case, it would be relevant to refer to some of the judgments

8. This Court in **Amit Sureshmal Lodha v. State of Haryana**, ***passed in CRM-M-10143-2022, decided on 14.03.2022*** had referred to several judgments, in which, it was held that in normal circumstances, permission can be granted to the petitioner to go abroad being his fundamental right to travel abroad. The relevant portion of the said judgment is reproduced as under: -

*“This Court, in the case of **Utkarsh Pahwa Vs. Assistant Director (PMLA), Directorate of Enforcement**, reported as 2019(1) Law Herald 870, had, after considering several judgments on the issue, observed that it can be safely concluded that in normal circumstances, permission could be granted to the petitioner to travel abroad as the right to travel abroad is his fundamental right but the same is to be regulated by imposing conditions. The relevant portion of the said judgment is reproduced hereinbelow: -*

*“5 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 vs. State of Punjab's case (supra) in which reliance was placed on Srichand P. Hinduja Versus State through CBI, New Delhi 2002(3) RCR (Criminal) 186 (SC), Arun Kapoor vs. State of Haryana 2004(4) RCR (Criminal) 594 (P&H), Brij Bhushan Singal vs. Central Bureau of Investigation 1994 (3) RCR (Crl.) 498 (P&H), Anjal Kumar @ Angel Kumar vs. State of Punjab 2010(1) RCR (Criminal) 201 and Naginder Singh Rana vs. 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.

6. *Keeping in view the said ratio of the aforesaid authority of Paramjit Kaur vs. State of Punjab's case (supra), which is applicable to the facts of the present case, in which also the permission has been sought by the petitioner to travel abroad for a short duration for attending the marriage ceremony of his childhood friends and the supporting documents have also been placed on record, I grant permission to petitioner Utkarsh Pahwa to travel abroad for attending the marriage ceremony of his childhood friends Jay at Bangkok during the period from 25.1.2019 to 28.1.2019 and marriage ceremony of Medha Alhuwalia at Turkey from 08.2.2019 to 09.2.2019 subject to following conditions:-*

(i) that the petitioner shall not seek extension of the period of his stay abroad at any ground whatsoever except in case of medical emergency and shall return to India from 1st trip by 29.1.2019 and by 10.2.2019 from the second trip.

(ii) that the petitioner shall not visit any other country except Thailand and Turkey.

(iii) that the petitioner shall not in any manner tamper with the evidence of the prosecution;

(iv) that the petitioner shall submit copy of his passport before visit and on return, within one week shall produce his passport in the court for placing on record its copy in respect of his said visit record;

(v) that the petitioner shall execute FDR/bank guarantee to the tune of Rs. 40 Lacs. This amount shall be returned to the petitioner when he will come back from his trips.

7. *Resultantly, petition is allowed in the above terms and the impugned order dated 2.1.2019 is set aside.*

8. *Since the main case has been decided, the pending CM, if any, also stands disposed of."*

The Hon'ble Supreme Court of India in judgment titled Satish Chandra Verma Vs. Union of India and others, reported as 2019(2) SCT 741, has also held that the right to travel abroad is an important

basic human right and the said right also extends to private life-marriage, family and friendship. Relevant portion of the said judgment is reproduced hereinbelow: -

“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.”

Although, in the said case, there were no criminal proceedings pending against the appellant therein and the denial to go abroad was on account of lack of vigilance credence but the aforesaid observation of the Hon’ble Supreme Court is very relevant as it highlighted the right to freedom to travel.”

9. A perusal of the above-said judgment would show that reference was made to the judgment of **“Utkarsh Pahwa Vs. Assistant Director (PMLA), Directorate of Enforcement, reported as 2019(1) Law Herald 870** wherein permission had been granted to travel abroad for a short duration to the petitioner therein for attending the marriage ceremony of his childhood friends.

10. In **Bhupinderpal Singh v. State of Punjab**, *passed in CRM-M-19734-2022, decided on 30.05.2022*, this Court had held as under: -

“ xxx xxx xxx xxx

A coordinate Bench of this Court in Abhijat Paliwal's (supra) case has held as under:-

“This application has been moved by the applicant/petitioner for seeking permission to travel abroad i.e. United States and Spain for the period commencing from 30.07.2018 to 14.08.2018 for attending the business activities during pendency of the petition.

Petitioner Abhijat Paliwal has filed the petition under Section 438 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.') for grant of anticipatory bail to him in case FIR No.1069 dated 14.11.2017 under Sections 403, 405, 409, 415, 418, 420, 463, 465, 471 and 120-B IPC at Police Station Chandni Bagh, Distt. Panipat. That petition is pending after issuing notice of motion before this Court and interim order is also in favour of the petitioner. During pendency of said petition, the present application has been moved for granting permission to travel abroad. The case is under investigation as no challan has been presented so far.

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Undisputedly, right to travel is a fundamental right and there is no law depriving a person of such right. Admittedly, the investigation is at the initial stage and the applicant/petitioner has undertaken to visit abroad subject to any terms and conditions to be imposed by this Court or by the investigating agency. He also undertakes to return immediately after expiry of period of two weeks and no prejudice would be caused as the investigation is at the initial stage. The delay in initiating the investigation has been caused because of change of Investigating Officer.

Accordingly, by considering the facts and circumstances of the case, the present application is allowed and the applicant/petitioner is allowed to travel abroad for a period of two weeks i.e. 30.07.2018 to 14.08.2018, subject to following conditions:

- (i) The applicant/petitioner is directed to furnish two securities of 10,00,000/- each (a) of 10,00,000/- in cash and (b) 10,00,000/- of immovable property before the Illaqa/Duty Magistrate within a period of three days;*
- (ii) He is also directed to file an affidavit giving an undertaking that in case he does not come back from United States and Spain within a period of two weeks from the date he leaves the country, the aforesaid securities shall stand forfeited;*
- (iii) It is also directed that the applicant/petitioner shall attend the investigation immediately after return to India and to cooperate with the investigation on the dates as directed by the Investigating Officer;*
- (iv) He is also directed that he shall furnish his address during his stay in abroad;*

(v) that he shall not seek extension of his stay abroad on any ground including medical ground;

(vi) that he shall furnish the details of the person to receive the process from the Court during his stay abroad on his behalf.

27.07.2018
Sd/-
(DAYA CHAUDHARY)
JUDGE

The abovesaid case was a case in which the anticipatory bail application was pending, as is in the present case and the interim protection had already been granted to the petitioner therein and an application was filed during the pendency of the said anticipatory bail application and in the said case, the coordinate Bench of this Court after holding that the right to travel abroad is a fundamental right, allowed the petitioner therein to travel abroad, subject to certain conditions. The applicant-petitioner in the present case, vide order dated 05.04.2021, had been granted the interim relief of stay of arrest and subsequently, vide order dated 30.03.2022 was granted interim bail with a direction to join the investigation and also abide by the conditions envisaged under Section 438(2) Cr.P.C. and the said case is now fixed for hearing on 01.08.2022.

11. This Court is not oblivious of the peculiar situation that the formalities required for getting permanent residency card of Canada are not only confined its issuance. Rather the citizen who has acquired permanent residency card has also to stay in Canada for 730 days in succeeding five years for retaining permanent residency card and the petitioner in the present case has not been able to fulfill the said condition of stay of 730 days of stay in Canada for retaining his permanent residency status. Though the permanent resident card of the petitioner had expired on 08.03.2024 but his permanent resident status has not been cancelled yet.

12. It is thus, apparent that the petitioner had raised debatable arguments with respect to his involvement in the FIR and at any rate, the mere involvement of the petitioner in a criminal case cannot be made the basis to reject his prayer to travel abroad, more so, when the petitioner has undertaken to abide by all the

conditions to be imposed by this Court. The observations made by learned Judicial Magistrate Ist Class, Ludhiana in the order dated 27.02.2024 to the effect that the petitioner has taken the court proceedings for granted, are based on surmises and conjectures and have no legs to stand. The settled principle of law has not been considered by the trial Court. Moreover, on earlier occasions also the petitioner was granted the permission to travel abroad and it is evident that he had never violated any condition imposed by the Courts at any stage, the permission was granted.

13. Undisputedly, right to travel is a fundamental right and there is no law depriving a person of such right. Admittedly, the investigation is at the initial stage and the applicant/petitioner has undertaken to visit abroad subject to any terms and conditions to be imposed by this Court or by the investigating agency. He also undertakes to return immediately after expiry of said period and no prejudice would be caused as the investigation is at the initial stage.

14. Keeping in view the above-said facts and circumstances and considering the fact that the 'Right to Travel Abroad' is a derivative of the right provided under 'personal liberty' under Article 21 of the Constitution of India and as such no citizen can be deprived of this right except according to the procedure prescribed by law. Any procedure established by law is required to be free from arbitrariness and must comply with the "principles of natural justice", the present petition is allowed and petitioner is permitted to travel abroad from 25.04.2024 to 06.10.2024 subject to the following conditions: -

- i) *The petitioner shall furnish two sureties (one being of his wife) in the sum of Rs. 50 lacs each to the satisfaction of the concerned trial Court/Duty Magistrate for ensuring his return from abroad and appearance before the Court.*

- ii) *After the acceptance of the said sureties, the petitioner would be permitted to go abroad from 25.04.2024 to 06.10.2024 subject to the condition that the petitioner would have to come back to India immediately on the lapse of the said period. The concerned trial Court/Duty Magistrate shall permit the petitioner to go abroad for the said period in case, the sureties so given are to the satisfaction of the concerned Magistrate/trial Court and in case, the petitioner also complies with the other conditions imposed vide the present order.*
- iii) *The petitioner shall give an undertaking before the concerned trial Court/Duty Magistrate that the petitioner shall return from abroad on the date so specified and appear before the concerned trial Court/Duty Magistrate for the purpose of trial and would not seek any extension with respect to the same.*
- iv) *During the period of the petitioner being abroad, the personal appearance of the petitioner shall be exempted and the petitioner shall be permitted to appear through his counsel. However, the petitioner would not be entitled to raise the objection that the evidence had been led in his absence.*
- v) *The petitioner shall not dispute his identity.*
- vi) *The petitioner shall not in any manner tamper with the evidence of the prosecution.*
- vii) *The petitioner shall not visit any other country except Canada and Papua New Guinea , during the said period for which the permission to travel abroad has been granted by this Court.*
- viii) *On return, the petitioner shall continue to be bound by the old/previous conditions which were imposed while releasing the petitioner on bail and the conditions imposed for his going abroad, as have been detailed in this order, shall cease to operate.*

16.04.2024
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(SANDEEP MOUDGIL)
JUDGE

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