

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17925-2024
Date of decision: 25th April, 2024

Tarun Grover

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajat Mor, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.
Respondent No.2 in person with
Mr. Anshul Mangla, Advocate.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of Code of Criminal Procedure seeking quashing of order dated 18.03.2024 as passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri in case arising out of FIR No. 300 dated 21.04.2023 registered under Sections 323, 406, 498-A and 506 of IPC, 1860 at Police Station City Yamuna Nagar, District Yamuna Nagar, whereby an application as filed by the petitioner seeking release of his passport and further seeking permission for going to Australia for attending his classes for completing course of Phd, had been rejected.

2. Briefly stated the factual matrix of the case is that the present petitioner was married with the respondent No.2 in the year 2017. There is matrimonial discord between them. The respondent No.2 lodged an FIR No.

300 dated 21.04.2023 under Sections 323, 406, 498-A and 506 of IPC at Police Station City Yamuna Nagar against the petitioner as well as his parents. The petitioner had gone abroad and when he came back to India on 05.12.2023, he was arrested from the Airport itself but had been granted concession of bail. It is submitted that he is a student of PhD at RMIT Malbourne, Australia. He has already completed one year of his course and has to resume the same in the month of April, 2024 for confirmation of his candidature. He had received a letter through e-mail from the University in this regard on 05.03.2024. He had moved an application for release of his passport and granting him permission to go to Australia for attending his classes for completing the aforementioned course before the learned trial Court, which prayer has been rejected.

3. The petitioner has challenged the impugned order on the grounds that while rejecting the prayer made by him, the learned trial Court ignored the fact that his candidature/admission would be cancelled, if he does not go to Australia. He has to stay there for a period of one year to the maximum and is ready to give an undertaking and even furnish surety in this regard. He has a right to travel abroad. It is argued by learned counsel for the petitioner that the chances of the petitioner to enhance his career would be marred, if he is not allowed to go to the RMIT University for verification of his candidature and to resume the PhD course which he is already pursuing. It is, therefore, argued that the impugned order is liable to be set aside, the petitioner deserves to be granted permission for going to Australia for pursuing his studies and also deserves to seek release of his passport. In

support of his arguments, learned counsel for the petitioner has placed reliance upon the authorities cited as '*Gaurav Raheja Vs. State of Punjab, 2022 SCC Online P&H 2010*', '*Sarthak Tandon Vs. State of Punjab, 2022 SCC Online P&H 2406*', '*Tarun Trikha Vs. State of West Bengal, 2015 SCC Online SC 1879*', '*Parvez Noordin Lokhandwalla Vs. State of Maharashtra and another, (2020) 10 SCC 77*'.

4. The respondent No.1-State has filed reply submitting therein that the aforementioned FIR was registered against him on 21.04.2023. A look out circular was got issued on 12.07.2023, as he was in Australia at that time. He was detained at the Airport, Delhi when he came back to India. It is submitted that supplementary challan has been presented against him and charges have also been framed against the petitioner and the co-accused. It is submitted that there are chances of petitioner's not returning to India, if he is extended permission to go to Australia. It is also submitted that the proceedings of the trial of the FIR would be hampered in his absence and therefore, it is argued that the petition is liable to be dismissed.

5. The respondent No.2 has filed a separate reply taking preliminary objections as to very maintainability of the petition by alleging that previously also the presence of the petitioner could be secured when a look out circular was issued against him on 12.07.2023 by the Bureau of Investigation (BoI) Ministry of Home Affairs, Government of India, as per the proceedings initiated by Superintendent of Police, District Yamuna Nagar which was still in force. It is also submitted by her that she has sent an e-mail to the concerned Ministry for impounding the passport of the

petitioner. The petitioner in the garb of pursuing his Ph.D course infact wants to flee from India as litigation in different forms as initiated by her is pending against him. She has given details of these litigations which are, a petition filed under Sections 125 of Cr.P.C. and a petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). Even a civil suit is pending between the parties and the petitioner himself has also filed petitions under Section 9 of Hindu Marriage Act, 1955 as well as Section 25 of Hindu Guardian and Wards Act, 1890 for seeking custody of two minor children of the parties. It is further submitted that the petitioner is infact evading the prosecution and that is why he wants to flee. With these broad submissions, it is urged that the petition be dismissed as no ground has been made out for interfering with the order of the learned Magistrate which is well reasoned one.

6. Learned counsel for the parties have been heard at considerable length and record has been perused carefully.

7. Before delving on the pleas and contentions as raised by both the sides, I consider it proper to discuss the position of law qua the right of a person to travel abroad. Reference can be made in this context to '**Barun Chandra Thakur Vs. Rian Augustine Pintu, 2019 SCC, Online SC 1899**' wherein the Hon'ble Supreme Court had observed that there can be no gain saying that the right to travel abroad is valuable one. The right to travel abroad is a valuable one and an integral part of right to personal liberty. Equally, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient in case some proceedings are going on can

certainly be imposed. At best the condition for seeking the permission before travelling abroad can be regulated but not deleted altogether.

8. It is also well settled proposition of law that under Article 21 of Constitution of India, a person cannot be deprived of the right to go abroad which is also included in the expression 'personal liberty' by law. Reference in this regard can also be made to the observations made by a Co-ordinate Bench of this Court in '*Jaspal Kaur Bhinder Vs. State of Punjab*' in CRM-M-40170-2020 decided on 23.04.2021,' wherein it was held that an accused had a right to travel though conditions can be imposed upon him to ensure his presence before the trial Court and in case any condition imposed by the Court is violated, appropriate coercive action can be taken. Similar observations have been made in *Gaurav Raheja's case (supra)*, *Sarthak Tandon's case (supra)*, *Tarun Trikha's case (supra)* and *Parvez Noordin Lokhandwalla's case (supra)*.

9. Taking above discussed position of law into consideration and applying the same to the peculiar facts and circumstances of the present case, it is to be seen as to whether permission should be granted to the petitioner to go to Australia for the period that has been asked for by him. Undoubtedly, he is facing trial in case arising out of FIR bearing No. 300 dated 21.04.2023 got registered against him by respondent No.2 making the allegations of her being harassed and subjected to cruelty on account of demand of dowry by the petitioner and qua criminal misappropriation of the property belonging to her. It is also a fact that in connection with bearing FIR No. 300 dated 21.04.2023, a look out circular was issued against him

and presence was secured when he was detained at the Airport of India when he arrived there on 05.12.2023. The respondent No.2 has also filed petitions under Section 125 of Cr.P.C. and Section 12 of the D.V. Act and the presence of the petitioner in those cases has not been secured so far. The allegations as levelled by respondent No.2 against him are that he is avoiding receipt of summons in both these cases. She has also claimed that her two minor (twin) children are living with her and they have recently undergone life saving surgeries. The petitioner has not been lending any financial support to her. On the other hand, submission made by the petitioner is that he undertakes to comply with the conditions as imposed by this Court for granting him permission to pursue his course and for release of his passport as his entire career would be hampered if the permission is not granted.

10. On considering the overall facts, this Court is of the opinion that the right of the petitioner to pursue his Ph.D course at Australia cannot be ordered to be curtailed but ofcourse a balance is required to be drawn, keeping in view, the interest of both the parties. The petitioner is ready to comply with the conditions imposed by this Court for being permitted to travel to Australia for the purpose of pursuing his PhD course. It is revealed from a perusal of the documents which are produced on record as Annexure P-1, P-6 and P-7 that this course is infact for a duration of four years. As per the claim of the petitioner, he has completed one year of that duration and undertakes to come back to India after another year of pursuing this course. The fact that a look out circular has been issued against the petitioner and the same is still in force, is not a question which is required to be considered

by this Court as it is for the Ministry of Home Affairs to decide that question. Further the plea of respondent No.2 is that she has sent e-mail for impounding passport of the petitioner is also a question that to be required to be decided by the concerned department. Keeping in view the totality of the afore-discussed facts and the law laid down in this regard, this Court is of the opinion that the petitioner can be go to Australia and stay there for a period of maximum one year i.e. till 30.04.2024 and his passport which is admittedly on the record of the trial Court file can be released. However, such permission is given, subject to the compliance of following conditions:-

- (i) The petitioner will deposit with the trial Court concerned in FIR No. 300 dated 21.04.2023, the original title deeds of the shop-cum-flat bearing No. 62 which is registered in the name of his father Sh. Jagdish along with an affidavit/undertaking from his father that he will not have any objection if the abovenamed property is forfeited in favour of respondent No.2 in the eventuality of the petitioner failing to return to India on 30.04.2024;
- (ii) The petitioner will furnish an undertaking before the trial Court that he will not object to framing of the charge and examination/cross-examination of the witnesses of the prosecution in his absence and that he will ensure due representation through his counsel, before the trial Court on each and every date;
- (iii) The petitioner will not dispute the identity of the witnesses examined in his absence;
- (iv) Before leaving India, he will ensure appearance before the Courts wherein petitions under Section 125 of Cr.P.C. and Section 12 of D.V. Act as filed against him by respondent No.2

are pending either by appearing himself and/or also by way of filing *vakalatnamas* on his behalf and will ensure his due representation by counsel in those cases on each and every date of hearing;

(v) The petitioner, on reaching Australia will give details of his address as well as mobile phone number, which he will provide through his counsel to the trial Court through his counsel within ten days of his reaching Australia and that he shall ensure his availability on WhatsApp application with an active internet connection.

(vi) The petitioner shall get prepared an FDR for a sum of Rs. 20,00,000/- in favour of respondent No.2 for a period of one year. The said FDR shall remain in the custody of the trial Court and the trial Court shall be at liberty to give the same to respondent No.2, if the petitioner does not return to India within the stipulated period. So far as the amount of Rs. 10,00,000/- is concerned, since the respondent No.2 is taking care of two minor children of the petitioner and herself and has already filed a petition for grant of interim maintenance, therefore, a demand draft for the aforementioned amount for a Rs. 10,00,000/- shall be prepared by the petitioner in the name of respondent No.2 which shall be given to the respondent No.2 before his leaving India, in the trial Court. He shall give the intimation to respondent No.2 in advance qua the date when he will appear before the learned trial Court for giving the demand draft to her so that she can appear to receive the demand draft on that date either herself or through either of her family members. The trial Court shall pass an order that such demand draft has been handed over to respondent No.2/ her family members. The respondent No.2 shall be at liberty to get the amount of the said demand draft encashed for maintenance of her children and

herself.

(vii) The petitioner will put in appearance before the trial Court on his return to India not only in case bearing FIR No. 300 dated 21.04.2023 but also in petitions filed by respondent No.2 under Section 125 of Cr.P.C. and Section 12 of D.V. Act and it shall be the responsibility of the petitioner to ensure the filing of replies, pleadings or conducting examination/cross-examination of the witnesses through his counsel and he will not raise any dispute in that regard also.

11. On his return of India on or before the stipulated period, the FDR deposited by him in the Court shall be returned to him and the original title deeds of the property of his father shall be returned to the latter.

12. With these observations, the impugned order dated 18.03.2024 passed by the learned trial Court is set aside and the petition is disposed of.

[MANISHA BATRA]
JUDGE

25th April, 2024
Parveen Sharma

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes