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243 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-25312-2024 (O&M)

Date of Decision: 10.09.2024

ALKA RANI

...PETITIONER

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. Rishabh Singla, AAG Punjab.

Mr. Arshdeep Singh Brar, Advocate
for the complainant.

HARPREET SINGH BRAR J. (ORAL)

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 27.02.2024 (Annexure P-9) passed by the Court of learned Chief Judicial Magistrate, Moga in case, titled as *State Vs. Alka Rani Etc.* bearing case No. CHI/471/2023 arising out of FIR No. 0165 dated 28.07.2023 registered under Sections 498-A, 420 and 406 of Indian Penal Code at Police Station City Moga, District Moga, vide which application of the petitioner to go abroad has been dismissed.

2. Learned counsel for the petitioner contends that petitioner is permanent resident of Canada and she has two minor grandchildren. The petitioner was the only female member in the family to take care of minor grandchildren and the grandchildren were born out of first marriage of son of the petitioner and his wife and both of them have taken divorce and custody of the children are with son of the petitioner and the petitioner intends to go abroad only for the welfare of minor grandchildren and petitioner has no objection, if the



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evidence is recorded in her absence. Learned counsel further submits that this Court vide order dated 29.07.2024 has already exempted the personal appearance of the petitioner before the learned trial Court and further the matrimonial dispute between the complainant and son of the petitioner has taken place in Canada and there are no specific allegations levelled against the petitioner and denial of the opportunity to travel abroad would be violative of the fundamental right of the petitioner enshrined under Article 21 of Constitution of India. Learned counsel for the petitioner further submits that petitioner has strong roots in the society and she has immovable and moveable property in India and her second son is permanently settled in India and he along with his wife are facing the trial.

3. Per contra, learned State counsel assisted by learned counsel for the complainant opposes the prayer made by learned counsel for the petitioner on the ground that the main accused-Anuj Goel is absconding and in case the petitioner is allowed to leave the country, she will not submit herself to the process of law and there is every likelihood that she will abscond. However, they could not controvert the fact that the petitioner is not involved in any other case and the right to travel abroad is a part of the fundamental right as enshrined under Article 21 of the Constitution of India as laid down in ***Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248.***

4. Having heard the learned counsel for the parties and after perusing the record of the case, this Court finds force in the arguments advanced by learned counsel for the petitioner. FIR(supra) has been lodged as a result of matrimonial dispute between son of petitioner and his wife and there is nothing on record which would remotely suggest that the petitioner would flee from justice and not join proceedings after she has returned to Canada. The petitioner



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has already been granted the concession of anticipatory bail by the learned Additional Sessions Court, Moga vide order dated 29.08.2023 (Annexure P-2). A delicate balance must be struck between the rights of the accused and the victim. Justice and compassion are mutually inclusive. While accountability and fairness are integral facets of justice, the idea of just justice can only be realised through compassion. However, the said purpose cannot be achieved if justice is dispensed only on the anvil of accountability in a mechanical manner, devoid of context and nuance.

5. A two Judge bench of the Hon'ble Supreme Court in ***M. Viswanathan v. M/s. S.K. Tiles & Potteries P. Ltd. & Ors*** 2010 (4) SCC (Cri) 298, while discussing the scope of Section 482 of the Cr.P.C. has observed that the inherent powers of the High Court can be exercised to secure the ends of justice and rectify any wrongs that have crept in course of administration of justice. Speaking through Justice Dr. Arijit Pasayat, the following was held:

“14. Exercise of power under section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere



videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice"

6. The Hon'ble Supreme Court was confronted with a similar factual matrix in the case of ***Parvez Noordin Lokhandwalla Vs. State of Maharashtra and another (supra)***, wherein speaking through Justice Dr. D.Y. Chandrachud, the following was observed:

"21. ...It would suffice to note that the co-accused was granted bail by the Sessions Judge Thane on 16 April 2018. We are called upon to decide only whether the appellant should be permitted to travel to the US for eight weeks. In evaluating this issue, we must have regard to the nature of the allegations, the conduct of the appellant and above all, the need to ensure that he does not pose a risk of evading the prosecution. The details which have been furnished to the Court by the appellant, indicate that he has regularly travelled between the US and India on as many as sixteen occasions between 2015 and 2020. He has maintained a close contact with India. The view of the High Court that he has no contact with India is contrary to the material on record. The lodging of an FIR should not in the facts of the present case be a bar on the travel of the appellant to the US for eight weeks to attend to the business of revalidating his Green Card. The conditions which a court imposes for the grant of bail - in this case temporary bail - have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of



imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.

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24. Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel to the US for a period of eight weeks..."

7. The Hon'ble Supreme Court of India gave constitutional status to the right of travelling abroad in the landmark judgment of ***Mrs. Maneka Gandhi v. Union of India (supra)***. Travelling being one of the most fundamental manifestations of liberty was brought to the fore. This principle was again reiterated in the judgement titled ***Satish Chandra Verma v. Union of India and others, reported as 2019 (2) SCT 741***, wherein highlighting that the right to travel abroad is an important basic human right, the following was observed:

*"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***).*



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*In the said judgement, there is a reference to the words of Justice Douglas in **Kent v. Dulles [1958] 357 US 116** which are as follows:*

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

8. Keeping in view the aforementioned discussion, and in the interest of justice the present petition is allowed and the impugned order dated 27.02.2024 (Annexure P-9) is set aside. The petitioner is allowed to travel to the Canada, however, subject to the following conditions:

- i. petitioner is directed to deposit Rs.5 lakhs as surety before the trial Court in the shape of FDR for ensuring her return and appearance before the Court;
- ii. petitioner shall appear before the trial court within a period of six months from the passing of this order. Further, she would not seek any extension regarding this;
- iii. petitioner shall be represented through her counsel;
- iv. shall not delay/stall the trial proceedings;
- v. shall not dispute her identity as accused;
- vi. shall have no objection if the prosecution evidence is recorded in her absence but in the presence of her counsel;
- vii. shall appear before the trial Court as and when required; and
- viii. any other condition, which the trial Court may impose.

9. However, nothing observed hereinabove shall be construed as an expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

10.09.2024

Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>