

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CRM-M-29726-2024 (O&M)
Date of Decision : July 16, 2024

POONAM DHAWAN

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. R.S. Bains, Sr. Advocate with
Mr. Aman Raj Bawa, Advocate and
Mr. Anmol Deep Singh, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Fetching grievance from the dismissal order dated 15.11.2023, as became drawn on her application seeking permanent exemption from personal appearance in the trial launched in FIR No.197 dated 05.11.2015, under Sections 420, 465, 467, 471 and 120-B of the IPC, registered at P.S. Sadar Patiala, District Patiala, the petitioner/a sexagenarian U.S. Citizen has instituted the instant petition under Section 482 read with Sections 205 and 317 of the Cr.P.C., thus assailing the dismissal order and seeking the exemption (supra).

FACTUAL MATRIX

2. The petitioner has been nominated as one of the accused in the FIR (supra), on the allegations that, she along with her co-accused made false representations before public authorities and also filed false affidavits and particularly forged a Will dated 14.11.1999 for getting the properties of

**CRM-M-29726-2024 (O&M)****2**

the complainant sanctioned in her name along with other accused persons to the tune of crores of rupees, thereby causing loss to the complainant and her minor children. During the course of investigation, the petitioner and her co-accused were declared “Proclaimed Persons/Offenders” owing to their non appearance before the investigating agency and ultimately, the Final Report under Section 173 of the Cr.P.C. was presented against them on 27.09.2018. However, the petitioner was granted the relief of anticipatory bail by the learned Additional Sessions Judge, Patiala, on the ground that, she was not properly and validly served. Thereafter, a supplementary report under Section 173(8) of the Cr.P.C. was presented against the petitioner and her co-accused on 14.08.2021.

3. It would be apt to record here that, consequent upon grant of anticipatory bail, the petitioner has been regularly appearing in the trial proceedings. Moreover, during pendency of the trial, the petitioner was granted permission to travel to the United States on four occasions and she never jumped or violated any of the conditions imposed upon her. However, now when the petitioner moved an application under Section 205 read with Section 327 of the Cr.P.C., thereby seeking permanent exemption from personal appearance on various grounds, she has been declined this relief by the learned Magistrate concerned. In this way, the drawing of the declining order dated 15.11.2023 has propelled the petitioner to access this Court.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

4. The learned senior counsel for the petitioner has submitted that

**CRM-M-29726-2024 (O&M)****3**

a purely civil dispute has been camouflaged as a criminal litigation and petitioner's presence is not required on each and every date of hearing before the learned trial Court concerned.

5. The learned senior counsel for the petitioner has further submitted that the petitioner is a sexagenarian lady holding permanent citizenship of the United States. Not only this, she is also a social worker with Senior Community Service Employment Program. Therefore, owing to her old age medical exigencies, besides her moral and social obligations and commitments towards her family and community, petitioner's presence is required in the United States at brief intervals. Moreover, the *bona fide* of the petitioner can be ascertained from the fact that, upon her becoming granted permission to travel to the United States on four occasions, the petitioner never committed a single default, rather returned to India within the stipulated period and joined the trial court proceedings.

6. Concluding his arguments, the learned senior counsel for the petitioner has submitted that the learned Magistrate concerned has ignored the basic object and principle of the provisions of Section 205 read with Section 327 of the Cr.P.C. and has wrongly and illegally dismissed the petitioner's permanent exemption application.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. The learned State counsel has vociferously opposed the grant of relief sought by the petitioner, *inter alia* on the ground that, during the course of investigation, the petitioner and her co-accused did not appear before the investigating agency, which resulted in them becoming declared

**CRM-M-29726-2024 (O&M)****4**

“Proclaimed Persons/Offenders”. Therefore, there is likelihood that, in case the petitioner is granted permanent exemption from personal appearance, she may misuse this concession.

8. The learned State counsel has further submitted that there are serious and specific allegations against the petitioner that she along with her co-accused has cheated the complainant and her children to the tune of crores of rupees by forging certain documents.

REASONS FOR ALLOWING THE INSTANT PETITION

9. This Court has heard the rival submissions made by the learned counsels for the parties and has also made a meticulous survey of the entire record.

10. What surges forth from a perusal of the impugned order, is that, primarily the following two reasons have been cited therein for declining petitioner’s request for permanent exemption from personal appearance:- (i) non framing of charges at that time; (ii) presence of accused is essential for the prosecution to establish her identity at the time of examination of witnesses.

11. For the reasons to be assigned hereinafter, this Court is of the opinion that the impugned order warrants interference. It is not under dispute that, as per Sections 205 and 317 of the Cr.P.C., the general rule is that the trial should be held and witnesses be examined in the presence of the accused and absence of the accused from the trial is an exception to the general rule. Section 307 of the Cr.P.C. endows discretionary powers to the learned Magistrate/ Judge concerned to grant exemption from personal at-

tendance at any stage of inquiry or trial under the Code.

12. In the case at hand, there is no wrangle amongst the contesting litigants that, the petitioner is a sexagenarian U.S. Citizen, who had earlier on four occasions travelled to the United States, but, only after getting prior permission from the learned Court concerned and she never committed any default and/or violated any of the terms and conditions imposed upon her. Moreover, it is also not under dispute that, the petitioner has been regularly appearing in the trial court proceedings. For ready reference, the details of orders granting travel permission (supra) to the petitioner are tabulated hereinafter:-

Sr. No.	Name of Court	Date of Order	Period of Exemption Granted
1.	JMIC, Patiala	22.10.2021	4 months
2.	JMIC, Patiala	19.04.2022	4 months
3.	JMIC, Patiala	03.01.2023	4 months
4.	JMIC, Patiala	08.06.2023	4 months

13. Insofar as the first reason behind declining permanent exemption to the petitioner is concerned, i.e. non framing of charges, this reason does not exist any longer, inasmuch as, it has been informed to this Court, besides is apparent from the respondent’s short reply dated 11.07.2024 that, charges have been framed on 23.11.2023.

14. Now, let’s advert to the second reason which constituted the backbone for drawing of the impugned order, i.e. necessity of accused’s presence for identification by prosecution witnesses. In the case at hand, it is also not under dispute that the petitioner is not required to be identified by all the prosecution witnesses. Therefore, this issue can become resolved through the learned Magistrate/trial Court concerned directing the petitioner

to, whenever any relevant prosecution witness, who has to identity the petitioner, is to be examined, cause appearance on that particular date for the purpose of identification.

FINAL ORDER

15. As a sequel to the discussion made hereinabove, the instant petition is **allowed** and the impugned order dated 15.11.2023 is set aside. The petitioner is hereby granted permanent exemption from personal appearance in the trial launched in FIR No.197 (supra), subject to the conditions enumerated hereunder:-

- (a) *As and when directed by the learned trial Court concerned, the petitioner will cause appearance before it, without any default;*
- (b) *The petitioner will never take the plea of recalling of any witness examined in her absence, but in the presence of her counsel;*
- (c) *The petitioner will forthwith deposit her passport before the learned trial Court concerned and will not leave the country without prior permission of the Court concerned.*

16. Pending application(s) stand disposed of accordingly.

July 16, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No