



CRM-M-30047-2024

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**227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-30047-2024

Date of Decision: 30.08.2024

Sushant Malik

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Dr. Deipa Singh, Advocate, for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside/quashing the common order dated 07.06.2024 (Annexure P-3) whereby the application filed by the petitioner seeking permission to travel abroad and application for unfreezing of bank account, have been dismissed.

2. Though the present petition has been filed by the petitioner praying for travelling abroad and unfreezing the bank account, however, learned counsel for the petitioner has submitted that she is not pressing the present petition qua the second prayer regarding unfreezing of the bank account.

3. Hence, the present petition survives only for the first prayer qua granting permission to the petitioner to travel abroad.

4. It has been submitted by counsel for the petitioner that the petitioner has been falsely and frivolously implicated in a case FIR No.343 dated 18.06.2022 registered under Sections 406, 420, 506 & 120-B IPC at Police Station Gohana Sadar, District Sonipat. She submits that the case is pending investigation as no challan has yet been filed by the Investigating



Agency in the same. She submits that during the pendency of the proceedings before the Investigating Agency, the wife of the petitioner became seriously ill due to various medical conditions. She has submitted that the petitioner and his wife are permanent resident of Australia and there is no other family member to take care of his wife. It is submitted that in these circumstances, visit of the petitioner to Australia is essential and hence, he filed application before the trial Court seeking permission to travel abroad alongwith application for unfreezing of his bank account. However, the applications have been rejected by the trial Court vide a common impugned order dated 07.06.2024. It is submitted that the applications filed by the petitioner were primarily rejected on the ground that on the earlier occasion, the petitioner was granted permission to travel abroad, however, he breached the condition as he did not return within the period granted to him. Another ground for rejection of the application was that his mother Krishna Devi, who is also co-accused did not return to India till date despite issuance of non-bailable warrants. She has further submitted that the petitioner and his mother (co-accused) filed an application for granting exemption on 17.03.2023, which was allowed by the trial Court, however, thereafter, non-bailable warrants were issued by the trial Court on 29.02.2024, as the petitioner failed to appear on one hearing. She has submitted that the petitioner though did not return to India within the specified period, however, he duly returned to India and joined the proceedings. It is submitted that the petitioner is ready to abide by the terms and conditions as imposed by this Court. She has further submitted that the petitioner has been prosecuted in a case, which is basically of civil nature,



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thus, right of the petitioner to travel abroad cannot be curtailed simply due to the pendency of the criminal case. She has reiterated the argument that the petitioner is an Australian citizen and his wife, who is suffering from various ailments, has no one to look after her. She thus submits that the petitioner be granted permission to travel Australia for a period of two months.

5. However, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner and his mother are the accused in the present FIR. He submits that on the earlier occasion, both of them were granted permission to travel abroad, however, his mother has not returned to India till date. He submits that the case is under investigation and thus, there are chances that the petitioner would not return to India. He has admitted that challan against the petitioner can be filed and he has instructions to say that they are going to file challan within a period of two weeks from today. Thus, he submits that the present petition being devoid of any merit, deserves to be dismissed.

6. Heard.

7. After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner is facing prosecution in FIR No.343 dated 18.06.2022. Needless to say that on the earlier occasion, the petitioner was granted permission to travel abroad. Though the petitioner did not return back within the specified period, however, thereafter, he returned back and joined the proceedings. Report regarding medical condition of wife of the petitioner, has been placed on record. Admittedly, both the petitioner and his wife are the Australian citizens. Simply because that



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mother of the petitioner has not returned to India, cannot be a ground for declining the prayer of the petitioner to travel abroad to meet and take care of his ailing wife. The case is under investigation from the last two years. However, this fact cannot be denied that the petitioner is very much in India and is cooperating in the investigation. To complete the investigation in time is the prime responsibility of Investigating Agency, however, in the present case, the matter is pending with the Investigating Agency for the last two years and they have not presented the challan in the Court. On being asked about the delay, learned State counsel has submitted that as the mother of the petitioner (co-accused) who was granted permission to visit abroad, has not returned to India and joined the Investigation, therefore, the investigation is stalled because of her non-appearance. It is pertinent to mention here that the challan could be filed against the petitioner alone but the investigating agency has chosen not to file the challan in the Court till the joining of the proceedings by the mother of the petitioner (co-accused). However, as stated by learned State counsel in the Court today that they are going to present the challan within a period of two weeks from today, they are directed to do so without any delay. Keeping in view the facts and circumstances of the case, the Court is of the opinion that the petitioner deserves to be granted permission for travelling abroad. The petitioner is allowed to travel abroad w.e.f. 15.09.2024 to 15.11.2024 subject to depositing Rs.25,00,000/- as security before the trial Court, which will retain the same in the shape of FDR in a nationalized Bank for a period of two months. The petitioner is also directed to furnish surety bonds of two local sureties in the sum of Rs.5 lacs each. The petitioner would also file an

affidavit before the trial Court undertaking that he will return to India within the time granted by this Court and would not seek extension of time in any circumstances. He will also furnish his complete address, phone number etc. and complete details of his movable and immovable properties in India in the said affidavit. The petitioner will return to India on or before 16.11.2024.

8. Hence, the order dated 07.06.2024 (Annexure P-3) is quashed to the extent of denying the permission to travel abroad to the petitioner.
9. Present petition stands allowed in above-said terms.

30.08.2024

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned

Whether Reportable

:

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Yes/No

Yes/No