



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

CRM-M-34812-2024
Date of decision: 24.07.2024

Gurpreet SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 16.07.2024 (Annexure P-8) passed by the learned Judicial Magistrate 1st Class, Dasuya in the case stemming from FIR, bearing No.80 dated 23.03.2023 registered at Police Station Tanda, District Hoshiarpur, Punjab, vide which the application filed by the petitioner for release of passport and permission to go abroad i.e. United States of America has been dismissed; and further for directing the release of the passport of the petitioner and granting him permission to travel to America.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is a permanent resident of the United States of America since the year 2016 and is a qualified commercial taxi driver through which he is earning livelihood for himself and his family. He obtained the New York State driving license 6-7 years ago and his employment as a driver is essential for the survival of his family. After sheer hard work, the petitioner has been able to get his Green Card and as per one of the conditions stipulated for retaining the

same and saving his permanent residency, he is required to return to the United States of America within a span of six months from departure. In the instant case, if the petitioner does not return by 03.08.2024, his permanent residency will be liable to be revoked. He further submits that the petitioner has deep roots in society since his aged parents are residing in India and he keeps travelling regularly between the US and India. Therefore, there is no likelihood of his absconding or jumping bail. The sole purpose of travelling to the US is to secure his Green Card and to earn his livelihood. Moreover, the petitioner has no objection in case the evidence is recorded in the trial proceedings. He has not done anything to create unnecessary impediments and delay in the conclusion of the trial and has fully cooperated with the Investigating Agency. Lastly, the petitioner has clean antecedents. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court in ***Parvez Noordin Lokhandwalla Vs. State of Maharashtra and another*** Criminal Appeal No.648 of 2020 (arising out of SLP (Crl.) No.3420 of 2020) decided on 01.10.2020 as well as the judgment of this Court in ***Amit Sureshmal Lodha Vs. State of Haryana*** CRM-M-10143-2022 decided on 14.03.2022.

3. Mr. Sandeep Kumar, DAG, Punjab puts in appearance on receipt of advance notice and opposes the prayer made by learned counsel for the petitioner on the ground that there is every possibility that petitioner would flee from the process of law and would abscond from prosecution. However, he 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 learned counsel for the parties and after perusal of

the record, it transpires that the petitioner is involved in the FIR (*supra*) as a result of matrimonial dispute between the 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 he has returned to the US. The petitioner has already been granted the concession of anticipatory bail by the learned Additional Sessions Court, Hoshiarpur vide order dated 28.02.2024 (Annexure P-4).

5. 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.

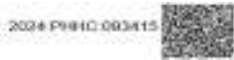
24. Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission 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...”

6. 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**).

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."



7. In the present case, the petitioner is an Indian citizen and holds an Indian passport. If he is not allowed to travel, it would have a truly detrimental effect with respect to the resumption of his Green Card.

8. Keeping in view the aforementioned discussion, and in the interest of justice the present petition is allowed and the impugned order dated 16.07.2024 (Annexure P-8) is set aside. The learned trial Court is directed to release the passport of the petitioner forthwith. The petitioner is allowed to travel to the United States of America, however, subject to the following conditions:-

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

24.07.2024
Neha

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