

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-51988-2023(O&M)
Date of order: 18.03.2024

Jagwant Singh & Another

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sarbjeet Singh, Advocate
for the petitioners.

Mr. Kunwarbir Singh, AAG Punjab.

Mr. A.S. Salar, Advocate
for respondent No.2.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing of order dated 30.08.2023 (Annexure P4) passed by learned JMIC, SAS Nagar in case FIR No.2 dated 09.02.2021 registered under Sections 406 and 498-A IPC at Police Station NRI, District SAS Nagar (Annexure P1) vide which application filed by the petitioners for permission to go abroad for a period of six months, has been dismissed; and further prayer is made that permission be granted to the petitioners to visit abroad for six months.

2. Both the petitioners are permanent residents of Canada and are senior citizens and want to travel abroad for six months.

3. Learned counsel for the petitioners inter alia submits that son of the petitioners was married to daughter of the complainant/respondent No.2 herein on 08.11.2019. No child was born out of this wedlock. As petitioners and their son are permanent residents of

Canada, the son of the petitioners along with his wife/complainant, had returned to Canada on 28.11.2019 i.e. within 20 days after the marriage.

4. It is submitted that thereafter, marital discord arose between the couple as a result of which on a statement dated 21.02.2020 made by respondent No.2, present FIR was registered against the petitioners and their son. Learned counsel submits that perusal of FIR (Annexure P1) reveals that the allegations made therein pertain to offences alleged to have been committed by their son, in Canada. It is stated that both the petitioners were not present on the day of incident of alleged assault on 20.12.2020 in Canada and FIR shows that no complaint was made against petitioners. It is stated that accordingly the petitioners have been falsely implicated in the present FIR.

5. It is further submitted that the daughter of the petitioners is also settled in Canada, and she was due for delivery in February 2024. It is stated that Total knee Arthroplasty of right knee of petitioner No.2 was performed on 1.5.2023, and the left knee replacement surgery had to be performed now. Accordingly, the petitioner had filed an application dated 07.08.2023 (Annexure P 3) before the learned trial court seeking permission to go abroad. It is stated that the said application has been dismissed by the trial Court vide impugned order dated 30.8.2023 solely on the ground that the petitioners will not come back to India.

6. Ld. Counsel argues that there is no ground for the learned trial Court to hold that the petitioners will not come back to India and therefore, the impugned order is passed on conjectures and surmises. In support, learned counsel relies upon judgment passed by a Co-ordinate Bench of this Court in **“Gaurav Raheja Vs. State of Punjab & Another” CRM-M-19373-2022 decided on 05.08.2022;** and **“Amit Sureshmal Lodha Vs. State of Haryana” Law Finder Doc ID # 1920675.** Learned counsel also relies upon judgment passed by a Co-ordinate Bench of this Court in **“Jaspal Kaur Bhinder Vs. State of Punjab & Another” CRM-M-40170-2020 decided on 23.04.2021,** relevant part of which is reproduced hereinbelow:-

*“Hon'ble Supreme Court in **Sri Chand P. Hinduja versus State through CBI, New Delhi, 2002 (3) RCR (Criminal) 186**, which has been: followed by this Court in **Vikramjit Singh alias Vikram versus State of Punjab, 2014 (4) AICLR 478; Paramjit Singh and others versus State of Punjab, 2011 (5) RCR (Criminal) 74; CRM-M-19551-2013, William Scott Pinckney versus U.T.Chandigarh, decided on 17.06.2013; CRM-M-2150-2019, Utkarsh Pahwa versus Assistant Director (PMLA), Directorate of Enforcement, decided on 23.01.2019; CRM-M-20817-2020, Yogender Pal Walia versus State of Punjab, decided on 29.07.2020 and CRM-M-48671-2018, Hemant Goyal versus State of Haryana, decided on 01.11.2018, has held that the accused has a fundamental right to travel abroad though conditions can be imposed to ensure his presence before the trial Court and in case of violation of any condition, appropriate coercive order can be passed.”***

7. Learned counsel for respondent No.2/complainant vehemently opposes prayer made on behalf of the petitioners primarily on the ground that since filing of challan on 02.11.2021, till date, the petitioners have appeared before the learned trial Court only twice in 2 years. It is submitted that on all other occasions, exemption applications were filed on behalf of the petitioners. It is further contended that petitioners have sought to mislead the Courts inasmuch as in the application (Annexure P3) filed by the petitioners before the learned trial Court seeking permission to go abroad, it has been stated that petitioner No.2 has to be operated upon her right knee; whereas before this Court, it is the case of the petitioners that petitioner No.2 has to undergo surgery on left knee. It is also submitted that even an application has been filed by the prosecution under Section 319 Cr.P.C., which is pending before the learned trial Court.

8. Learned counsel for the petitioners clarifies that due to an inadvertent error, it was mistakenly stated in the application (Annexure P3) that surgery has to be performed on the right knee, however in actual

fact, it is the left knee. Further vide the said application under Section 319 Cr.P.C., the prosecution has sought presence of petitioners' daughter who is also a resident of Canada.

9. Learned counsel for the petitioners submits that petitioner No.1 is a retired DFSO and is drawing pension and petitioner No.1 owns 16 acres of land as mentioned in order dated 13.05.2021 (Annexure P2) and therefore, there is no question of their not returning to India and permission to go abroad is sought only for 6 months. It is further reiterated that both the petitioners are permanent residents of Canada.

10. No other argument is made on behalf of the petitioners.

11. I have heard learned counsel for the petitioners and perused the case file in detail.

12. Perusal of application dated 07.08.2023 (Annexure P3) filed by the petitioners before the learned trial Court seeking permission to go abroad shows that the petitioners have stated therein that the petitioner no.2 has to undergo right knee surgery and, as both her children reside in Canada there is no one to look after her over here. In Para 4 thereof it has been stated that the petitioners have no objection if prosecution evidence is recorded in their absence and in the presence of their counsel and they will not dispute the identity at any stage of prosecution evidence. It is further stated therein that the petitioners gave undertaking to return to India and join investigation in the present case within the timeframe granted by the Court. It has further been stated that the petitioners are ready to furnish securities/surety bonds, and further undertake to abide by any other conditions imposed by the Court. Yet, their application has been dismissed vide the impugned order dated 30.8.2023 only on the ground that the petitioners would not return back to India. I find that there is no basis for such apprehension/assumption on part of the learned trial court.

13. There are total 3 accused in the present matter i.e. present petitioners and their son. Notice under Section 105 Cr.P.C. has been sent to the son of the petitioners. It is admitted that investigation in

the present case is complete and final report under Section 173 Cr.P.C. was presented on 02.11.2021. Charges have been framed on 02.03.2022 and case fixed for prosecution evidence and thereafter, prosecution moved an application under Section 319 Cr.P.C. which is pending for arguments for 20.02.2024. Out of 20 witnesses only 1 has been examined so far and next date of hearing before the learned trial Court is 16.03.2024. It has already been undertaken by the petitioners that the evidence can continue to be led in their absence.

14. The first ground on which the petitioners have sought permission to travel abroad is stated in Para 8 of the present petition that the daughter of the petitioners is 18 weeks pregnant and is due for delivery on 11.02.2024. Medical certificate of daughter of the petitioners dated 21.09.2023 (Annexure P5) is also on record. It has come on record that after filing of the present petition, daughter of the petitioners has given birth to a daughter on 07.02.2024 as evident from Annexure P8. As such, it is clear that the petitioners have not misled this Court.

15. The second ground on which the petitioners have sought permission to travel abroad is that petitioner No.2 has to undergo knee replacement surgery in her left knee. Total knee Arthroplasty of right knee of petitioner No.2 was performed on 1.5.2023. It has been duly clarified by learned counsel for the petitioners that due to an inadvertent error, it was mistakenly mentioned in the application (Annexure P3) that surgery has to be performed on the right knee. In fact, petitioner no.2 has to undergo knee replacement surgery of the left knee. In this regard, medical record of the petitioner No.2 is available at Annexure P7.

16. I find merit in the submissions made on behalf of the petitioners. Moreover, in the relied upon case of **Amit Sureshmal Lodha (supra)** a Co-ordinate Bench of this Court has held as under:-

“34. This Court is required to draw a balance between the right of the petitioner to travel abroad and also right of the prosecution to duly prosecute the petitioner so as to prevent him from evading the trial. From perusal of the various

judgments passed by the Hon'ble Supreme Court of India as well as this Court, it is clear that paramount consideration is given to the conditions imposed upon the persons who have been granted the permission to go abroad, so as to ensure that they do not flee from justice."

The petitioner in the above cited case too was allowed to travel abroad despite the fact that there were 41 criminal cases pending against him. The present petitioners are on much better footing.

17. In view of the facts and circumstances of the present case, more so, the fact that the petitioners own property in India; their children are settled abroad; petitioner No.2 has to undergo knee replacement surgery of left knee as is evident from her medical record (Annexure P7); as such, there is no one here to look after her after the surgery; daughter of the petitioners has given birth to a child on 07.02.2024 as is evident from Annexure P8; present petition is **allowed** and impugned order dated 30.08.2023 (Annexure P4) is set aside.

18. The petitioners are granted permission to visit Canada from date of passing this order up to 30.09.2024, subject to following conditions:-

a) The petitioners shall furnish one surety each in the sum of Rs.10 lakh each to the satisfaction of the concerned trial Court/Duty Magistrate against the 16 acres of land stated to be in the ownership of the petitioners;

b) Passports of the petitioners shall be released by the Court concerned by keeping a photocopy thereof on record;

c) The petitioners on returning, within 7 days from the date of return, shall produce their passports before the concerned trial Court/Duty Magistrate. Concerned Court shall ensure that original passports of the petitioners are returned to the Court on or before 7.10.2024 after they return from Canada;

- d) The petitioners shall not be entitled to seek extension of their stay in Canada except on account of emergency health conditions;
- e) During the period of stay abroad, physical appearance of the petitioners shall be exempted and they shall be permitted to appear through counsel, however, petitioners would not be entitled to raise objection that evidence has been led in their absence;
- f) The petitioners shall not visit any other country except Canada during the said period for which permission to travel abroad has been granted by this Court.

19.

Present petition stands disposed of in above terms.
20.

Pending application(s) if any also stand(s) disposed of.

18.03.2024		(Nidhi Gupta)
Sunena		Judge
Whether speaking/reasoned	Yes/No	
Whether reportable	Yes/No	