

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-65146-2023 (O&M)
Date of decision: 16.02.2024

Nasib Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Ekta Thakur, Advocate
for the petitioners.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioners under Section 205 read with Section 438(2) of Cr.P.C. seeking permission to visit United States of America for the period ending on 31.08.2024.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that an FIR bearing No. 90 dated 13.04.2023, was registered under Section 304-B of IPC at Police Station Haibowal, District Police Commissionerate, Ludhiana on the statement of complainant Gurpreet Singh with the allegations that his sister namely Sukhpreet Kaur alias Sukhi, who was married with the son of the petitioners, had been subjected to harassment and cruelty on account of demand of dowry by the son of the petitioner and

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his family members, due to which, she had committed suicide in the intervening night of 12-13.04.2023. After registration of the FIR, the investigation proceeding have been initiated, which are going on. However, the petitioners have been granted benefit of pre-arrest bail by this Court, vide order dated 04.10.2023 passed in **CRM-M-23122-2023**, subject to the conditions envisaged under Section 438(2), which reads as under:

“Section 438 (2):- When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including -

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) **a condition that the person shall not leave India without the previous permission of the Court;**

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.”

3. Learned counsel for the petitioners submits that petitioner No. 1 is a heart patient and has undergone a bypass surgery in USA. He has been going to USA for follow up treatment of the bypass surgery. Similarly, petitioner No. 2 is also getting treatment in USA from the same hospital, from where her husband, i.e. petitioner No. 1, is getting treatment. They have been

given several benefits being citizens of USA like checking, testing and paying medical expenses by the authorities concerned and the same can be withdrawn if they do remain absent from USA for six months. It is also submitted that the medical expenses are very high, which the petitioners cannot bear here but if they visit USA, they would get all the medical facilities free of cost.

4. Learned counsel for the petitioners further submits that in the wake of aforesaid condition No. (iii), which prescribes that the petitioners cannot leave India without previous permission of the Court, they had moved an application before the Court of Judicial Magistrate First Class, Ludhiana seeking permission to travel to USA but the same has been dismissed, vide order dated 24.11.2023. Therefore, the petitioners have approached this Court by way of filing the present petition. It is argued that keeping in view the health condition of the petitioners and that they need follow up treatment, necessary permission may be granted to them to travel abroad. In support of his arguments, learned counsel for the petitioners has relied upon *Anubhav Khanna vs. State of Punjab and another, decided on 09.05.2022*, *Nandini Bhatnagar vs. State Govt. of NCT of Delhi : 2012(1) AD (Delhi) 387* and *Aman Kumar Singh and others vs. State of Chhattisgarh : 2023 NCCGHC 23411*, wherein the accused persons have been granted permission to travel abroad in different circumstances.

5. Learned State counsel has filed the status report, wherein it is submitted that investigation qua the petitioners has been completed and challan has also been prepared and the same will be presented in Court very soon. Therefor, at this stage, the petitioners cannot be allowed to travel abroad as there is possibility that they would not return to India to face the trial.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. The petitioners, who are husband and wife and aged about 70 and 68 years respectively, have been arraigned as accused in the aforesaid FIR and they have been granted concession of anticipatory bail by this Court. They are seeking permission to travel to USA for the purpose of their follow up treatment/further treatment. Hon'ble Apex Court in *Satwant Singh Sawhney Versus D. Ramarathnam, Assistant Passport Officer, New Delhi AIR 1967 SC 1836* and *Smt. Maneka Gandhi Versus Union of India AIR 1978 SC 597* has held that expression 'personal liberty' in Article 21 of the Constitution of India is a widest amplitude, which includes the right to go abroad. A person cannot be deprived of this right except in accordance with procedure prescribed by law. In a matter arising out of a matrimonial dispute, this Court in *CRM-M-40170-2020 tiled as "Jaspal Kaur Bhinder Versus State of Punjab"*, decided on 23.04.2021, has held that an accused has a right to travel abroad, though conditions can be imposed to ensure his presence before the trial Court and in case any condition imposed by the Court is violated, appropriate coercive action can be taken. A perusal of the status report shows that the investigation qua the present petitioners have been completed and the police is in the process of filing the final report before the Court. The respondent-State has opposed the prayer of the petitioners on the ground that there are chances of the petitioners' fleeing from the process of Court as they would never come back to India. However, this Court is of the opinion that in view of the ratio of law as laid down in aforesaid judgment and also in view of

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the health condition of the petitioners, they can be granted permission to travel to USA but with certain conditions.

8. Accordingly, the present petition is allowed. The petitioners are granted permission to travel to USA with the following conditions that:

- (i) they will return to India on or before 31.08.2024;
- (ii) they will join the investigation, if required, through video conferencing during their stay in USA;
- (iii) they will be represented by a counsel before the trial Court, if challan is presented before 31.08.2024;
- (iv) they will not delay/stall the proceedings of the trial Court;
- (v) they will appear before the trial Court as and when required by the trial Court and any other condition which the trial Court may impose;
- (vi) the trial Court will record the evidence and learned counsel for the petitioners will cross-examine the witnesses without raising any objection that the petitioners are not present and such evidence will termed as legal evidence and they will not dispute the question of their identity.
- (vii) In case learned counsel for the petitioners fails to cooperate with the proceedings in the trial Court, it will be open for the trial Court to recommend for recalling of the present order.
- (viii) Immediately prior to the departure, the applicants-petitioners shall intimate in writing to the concerned Police Station detailing the itinerary of their visit to abroad, including flight number and address where they would reside in USA as well as the contact number on which, they could be contacted in USA;

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(ix) they shall deposit a bank guarantee to the tune of Rs. 5,00,000/- each before the Illaqua Magistrate along with the original sale deed of H. No. 1445 (Ground Floor), Sector 61, Chandigarh, which is owned by petitioner No. 1, as per copy of sale deed (Annexure P-7).

16.02.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

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