



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(122)

**CRM-M-44214-2025 (O&M)
Date of Decision: 25.9.2025**

Raghubir Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. J.S.Saini, Advocate
for the petitioner.

Ms. Saumya Ahluwalia, Sr. DAG, Haryana.

KIRTI SINGH, J. (ORAL)

CRM-38600-2025

The application is allowed as prayed for. Annexures P-5 and P-6 are taken on record.

CRM-M-44214-2025

1. The instant petition has been preferred against the orders (Annexure P-4) passed by the learned Additional Sessions Judge, Ambala dated 1.4.2025, whereby while granting the concession of interim anticipatory bail to the petitioner, he was directed to surrender his passport before the investigating officer, and the order dated 17.4.2025, whereby the said order dated 1.4.2025, has been made absolute.

2. Learned counsel for the petitioner submits that the petitioner, who is the brother-in-law (*jeth*) of the complainant, has been residing in Dubai (UAE) since 22.3.2021, and is employed as an Aluminum Fitter in the Glass Line Metal Factory-LLC. The petitioner had visited India on 24.1.2023 for attending two marriage ceremonies i.e. the marriage of his



brother and the marriage of his brother-in-law. It is submitted that the brother of the petitioner, at the time of his marriage, was working in UAE. Since, a dispute arose between the complainant with her husband (brother of the petitioner), as she also wanted to go abroad with her husband, therefore, she left her matrimonial home on 24.3.2023 and did not return back. The petitioner returned to Dubai on 30.3.2023, whereas the brother of the petitioner returned to his job in the month of April, 2023, unaccompanied by the complainant, due to which, the complainant got lodged FIR No. 409 dated 16.8.2023 against her husband, as also the present petitioner and his wife. On 27.3.2025 the petitioner visited India and applied for anticipatory bail before the learned Court concerned. Vide impugned order dated 1.4.2025, while granting interim anticipatory bail to the petitioner, the learned Court concerned has imposed a harsh condition upon him to surrender his passport with the investigating agency, which order was subsequently made absolute on 17.4.2025. The said condition of surrender of passport, is contended to be arbitrary and onerous. The petitioner himself joined the proceedings after coming from Dubai, therefore, there is no chance of absconding from trial. The petitioner undertakes to abide by all the terms and conditions deemed appropriate by the Court. However, it is prayed that the said impugned condition of surrender of passport imposed upon the petitioner while granting interim anticipatory bail to him be quashed and set aside. In support of his arguments, learned counsel for the petitioner has placed reliance on the judgment passed by this Court in ***Capt. Anila Bhatia versus State of Haryana, 2018(4) RCR (Criminal) 899*** and the judgment dated ***21.1.2025*** passed in ***CRM-M-615-2025*** titled as ***Kulwant Singh @ Kulwant Singh versus State of Punjab and others.***

3. Notice of motion.



4. Ms. Saumya Ahluwalia, Sr. DAG, Haryana accepts notice on behalf of the State-respondent, and has opposes the present petition.

5. Status report by way an affidavit of Deputy Superintendent of Police (Hqs.), Ambala, has been filed, which is taken on record.

6. Heard the rival submission of the parties.

7. Before proceeding to make an adjudication upon the present petition, a gainful reference can be made to the judgment passed in ***Kulwant Singh @ Kulwant Singh***’ case (supra), wherein the law with respect to surrender of passport *vis-a-vis* personal liberty of an individual was discussed. Relevant paras of the said judgment read thus:-

“8. When a person is made to surrender his passport, it curtails his right of movement beyond the country. Article 21 of the Constitution of India says :

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

9. The expression “personal liberty” is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a person. The Supreme Court, in ***Satwant Singh v. Asst. Passport Officer [(1967) 3 SCR 525]*** held that “personal liberty” guaranteed under Article 21 encompassed a right of locomotion, of the right to travel abroad. Every person living in India has a fundamental right to travel, even outside India. Refusal by the Government to issue a passport without a valid law prescribing reasonable restrictions was held to be an arbitrary exercise of the executive power infringing the equality clause of the Constitution. After the decision in *Satwant Singh*’s case the Parliament passed the Passport Act, 1967 regulating conditions for the grant and refusal of passport and providing grounds for impounding passport. Even after passing of the said Act, in ***Maneka Gandhi v. Union of India [(1978) 1 SCC 248]*** the Supreme Court held that the right to travel abroad is not only encompassed in the right to liberty under Article 21 of the Constitution, but that right could only be denied if the procedural law which governed its exercise is fair. 10. The preamble to the Act says that it is, “to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and other persons and for matters incidental



ancillary thereto.” Section 10(3) of the Act empowers the passport authority to “impound or cause to be impounded or revoke a passport or travel document” in the circumstances stated therein. Thus, power to impound a passport is given to the passport authority under the Act.

11. The Supreme Court in the case of **“Suresh Nanda vs. CBI”, 2008 (3) SCC 674**, has not considered the power of criminal court to direct a person accused or suspected of commission of a non cognizable offence while he is released on bail to surrender his passport in court to ensure his presence at the investigation, enquiry or trial of the case. Instead, the Supreme Court has only considered the scope and ambit of Section 104 of the Code which said;

“Any court may, it thinks fit, impound any document or thing produced before it” under the code. The power under Section 104 of the Code could be exercised only with respect to a document produced before the court and not, regarding a document not produced before it. In Wharton’s Law Lexicon, the word “impound” is given the meaning, “to place in the custody of the law”. Per Oxford Dictionary the word means “to take legal or formal possession of”. In Suresh Nanda’s case (supra), the Supreme Court considered the distinction between “seizing” and “impounding” and held that impounding is of the document which is seized. It was held that after enactment of the Act which is a special Act, a passport seized (by the CBI in that case) could be impounded only under Sec.10(3) of the Act and that so far as Sec. 104 of the Code is concerned to the extent it related to documents coming under Sec. 10(3) of the Act, the maxim, ‘*generalia specialibus non derogant*’ applied. In that case the officials of the CBI conducted a search and seized the passport of appellant. That document was retained by the CBI. Appellant moved the court of Special Judge to release the passport. The Special Judge Crl. M.C. No.1734 of 2011 allowed the application. That order was set aside by the High Court in revision. The Supreme Court set aside the order of the High Court on the principle above stated. Suresh Nanda was not a case of the criminal court imposing a condition while granting bail in a non bailable offence to surrender the passport. The Supreme Court was not considering the power of criminal court in view of Sec. 10(3) of the Act, to impose a condition to surrender the passport while granting bail in a non bailable offence. Instead, that question was left open as is clear from the observation in paragraph 20 (of Suresh Nanda’s case) that : “We, however, make it clear that we are not expressing any opinion on the merit of the case and are not deciding whether the passport can be impounded as condition for the grant of bail.”

12. Even after enactment of the Act, in view of Article 21 of the Constitution as explained in Maneka Gandhi’s case (supra) the right to travel abroad is encompassed in the right to personal liberty which



cannot be deprived except in accordance with the procedure established by the law. The right to travel abroad can be deprived by following procedure established by the law. Sec. 437(3) of the Code requires and enables the criminal court while releasing a person accused or suspected of commission of a non bailable offence by imposing a condition that such person shall attend in accordance with the conditions of the bond executed under chapter XXXIII of the Code. Even in the matter of non bailable offences not falling within sub sec. (3) of Sec. 437 of the Code, the Magistrate or court has the discretionary power to impose condition while granting bail. The person to whom bail is granted has to execute a bond in Form No.45 given in the second schedule of the Code. The relevant provision of the bond in Form No.45 states.” and required to give security for any attendance before such officer or court on condition that I shall attend such officer or court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default therein.....”

13. *The function of the criminal court under Sec. 437 of the Code is not merely to impose a condition in the bond that the person accused or suspected of commission of a non bailable offence and to whom bail is granted attended before the officer or court. The court has to ensure that the condition is complied. The court has to enforce it. The court has to ensure that the accused who is released on bail and who has a passport does not flee from justice. The “majesty of the law is affected when a wrong doer escapes its mighty clutches-whether arising out of a voluntary or involuntary situation.” The court has to preserve the majesty of the law. That could be done, in the case of a person holding a valid passport by directing him to surrender the same in court. That the passport authority may, if proceeding in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India impound or cause to be impounded or revoked such document under Sec.10(3)(e) of the Act does not deprive the power and duty of the criminal court to enforce its order by appropriate direction.*

14. *But the criminal courts have to take extreme care in imposing such condition. It cannot mechanically, and in every case where an accused has a passport impose a condition for its surrender. Law presumes an accused to be innocent till he is declared guilty. As a presumably innocent person he is entitled to all the fundamental rights guaranteed to him under the Constitution. At the same time, interest of*



the society has also to be protected. The court has to strike a balance between personal liberty of the accused guaranteed under Article 21 of the Constitution, investigation rights of the police and the interest of the society. The criminal court has to consider possibility of the accused if released on bail, fleeing justice and thereby thwarting the course of justice which affects the majesty of the law, as also the individual rights of the accused. The court has to consider antecedents of the person accused or suspected of commission of the offence, nature of the offence he is said to have committed, necessity for his presence for investigation, duration of investigation and such other relevant factors. The court has to decide whether notwithstanding the personal liberty of the accused, interest of justice required that his right of movement should be restricted during the pendency of the case by directing him to surrender his passport. If necessary, it is open to the criminal court direct the accused to execute bond in case he has to go abroad for any purpose, for appropriate amount with sureties undertaking to appear before the Investigating Officer or court as the case may be as and when required to do so. These are though not exhaustive, some of the matters to be borne in mind by the court while deciding whether there should be a condition to surrender the passport or when there is a request to release the passport already surrendered in court.

15. Section 10(3)(e) of the Passport Act specifically deals with impounding of passport whereas Section 104 Cr.P.C., allows the Court to impound the document to produce before the Court. The Passport Act overrides the provision of Cr.P.C., for the purpose of impounding passport. In the present case in hand, the order directing to surrender the passport indefinitely amounts to impounding of the passport itself.

16. x x x x

17. No doubt, as per Section 102(1) of Criminal Procedure Code, the power of police officer is there to seize certain property. The police may have the power to seize a passport under Section 102(1) of the Criminal Procedure Code but it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967. There is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his/her possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document, the said



property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In the Law Lexicon by P. Ramanath a Aiyar (2nd Edition), the word “impound” has been defined to mean “to take possession of a document or thing for being held in custody in accordance with law”. Thus, the word “impounding” really means retention of possession of a good or a document which has been seized.”

8. As discussed **Kulwant Singh**'s case (supra), which squarely covers the case of the present petitioner, though the investigating agency may have power to seize a passport under Section 102 Criminal Procedure Code if it is permissible within the authority given under Section 102 of Criminal Procedure Code, however, it does not have power to retain or impound the same, as the said that can only be done by the passport authority under Section 10(3) of the Passports Act, being a specific legislation. As such, whenever a passport is so seized, the investigating agency must forward it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter that the passport authority is to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport.

9. Reverting to the case in hand, the petitioner is the brother-in-law of the complainant, and has been residing in Dubai since 22.3.2021. The petitioner was granted interim anticipatory bail by the learned Additional Sessions Judge, Ambala on 1.4.2025, which was made absolute vide order dated 17.4.2025. However, as a condition, the petitioner was directed to surrender his passport before the investigating agency.

10. For the above stated reasons and in view of the law as



discussed, the present petition is allowed and impugned condition passed in the order dated 01.4.2025 (Annexure P-4) passed by the Additional Sessions Judge, Ambala is set aside. The petitioner is at liberty to move a specific application for release of his passport within a period of two weeks from the date of receipt of certified copy of this order. In case, such an application is moved, the trial Court is directed to consider the application and return the passport forthwith without any delay.

11. Needless to say, the petitioner shall not leave India and travel abroad without prior permission of the Court.

12. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

September 25, 2025
Gurpreet Singh

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