



CRM-M-55439-2024 (O&M)

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307 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-55439-2024 (O&M)

Date of Decision: 22.01.2025

DALWINDER SINGH AND ANOTHER

...PETITIONERS

Versus

SUBHASH CHAND AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navjinder Singh Sidhu, Advocate
for the petitioners (through video conferencing).

Mr. Anurag Gupta, Advocate for respondent No. 1(through V.C.)

Mr. Harkesh Kumar, AAG Haryana for respondent No. 2-State.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition has been filed by the petitioners under Section 528 of Bharatiya Nagarik Suraksha Sanhita 2023 for setting aside the order dated 19.10.2024 (Annexure P-10) passed by learned Sub Divisional Judicial Magistrate, Pehowa in CIS No. COMI-370-2013 dated 19.04.2012 titled as ***Subhash Chand Vs. Tarsem Singh and Others*** registered under Sections 420, 406, 120-B, 506 of Indian Penal Code, whereby the application seeking permission for visiting USA has been dismissed.

2. Learned counsel for the petitioners contends that both the petitioners are premanent citizens of U.S.A. and had visited India. Learned counsel further contends that petitioner No. 1 is a business man and owner of trucking company namely ***Sandhu Cargo Inc***, whereas petitioner No. 2 has undergone Bypass Surgery in the year 2017 and is on regular medication and has to go for regular check-up after every 03 months as advised by doctors. Copy of electronic certified copy of certificate issued by California Secretary of State qua company

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Annexures P-5 and P-6 respectively. Learned counsel further contends that petitioners had come to India on 23.05.2024 and since then they are regularly appearing before the learned trial Court. He further submits that denial of the opportunity to travel abroad would be violative of the fundamental right of the petitioners enshrined under Article 21 of Constitution of India.

3. Per contra, learned State counsel assisted by learned counsel for respondent No. 1 opposes the prayer made by learned counsel for the petitioners on the ground that in case the petitioners are allowed to leave the country, they will not submit themselves to the process of law and there is every likelihood that they will abscond. However, they could not controvert the fact that 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 the learned counsel for the parties and after perusing the record of the case, this Court finds force in the arguments advanced by learned counsel for the petitioners. Perusal of record reveals that co-accused of the petitioners have approached this Court seeking permission to travel abroad and vide order dated 13.09.2024 passed in CRM-M-41689-2024, this Court had granted them permission to travel abroad. The petitioners have already been granted the concession of regular bail by learned Court below vide order dated 18.06.2024 and thereafter, they have been appearing before the learned trial Court on each and every date. A delicate balance must be struck between the rights of the accused and the victim. Justice and compassion are mutually inclusive. While accountability and fairness are integral facets of justice, the idea of just justice can only be realised through compassion. However, the said



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purpose cannot be achieved if justice is dispensed only on the anvil of accountability in a mechanical manner, devoid of context and nuance.

5. A two Judge bench of the Hon'ble Supreme Court in ***M. Viswanathan v. M/s. S.K. Tiles & Potteries P. Ltd. & Ors 2010 (4) SCC (Cri) 298***, while discussing the scope of Section 482 of the Cr.P.C. has observed that the inherent powers of the High Court can be exercised to secure the ends of justice and rectify any wrongs that have crept in course of administration of justice. Speaking through Justice Dr. Arijit Pasayat, the following was held:

“14. Exercise of power under section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of



justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice”

6. 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.

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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..."

7. 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."

8. Keeping in view the aforementioned discussion, and in the interest of justice the present petition is allowed the petitioners are allowed to travel to the USA (United State of America), however, subject to the same conditions

imposed on the co-accused:

- i. petitioners shall attend the trial as and when called upon, either in person and, if permitted by the trial Court, then via video conferencing when abroad, and shall not claim any prejudice for such appearance though video conferencing.

ii. The petitioners acknowledge that in case non-compliance, the consequence shall include, but not be limited to, forwarding the undertaking to the authorities of the concerned country by the Government of Indian/State Government/Investigator for deportation, extradition and cancellation of the petitioner/s passport.

iii. The permission and the bail shall be cancelled if the petitioners violate any condition.

iv. The petitioners shall either hand over the original attested affidavit to the concerned Investigator or send it through speed post, with one copy to the office of the Advocate General.
9.

Given the above, the present petition is allowed and the impugned order dated 19.10.2024 (Annexure P-10) declining the permission to travel abroad is quashed.

(HARPREET SINGH BRAR)

JUDGE

22.01.2025

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No