

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(251)

CRM-M-19373-2022 (O&M)
Date of Decision:- 05.08.2022

Gaurav Raheja

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate and
Mr. Nikhil Ghai, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab
for State-respondent No.1.

Mr. Nitin Meel, Advocate for
Mr. Kulbhushan Raheja, Advocate
for complainant-respondent No.2.

SUVIR SEHGAL, J. (Oral)

CRM-26502-2022

Application is allowed as prayed for.

Affidavit dated 27.07.2022 of the petitioner along with valuation
report, Annexure P-17, are taken on record on record.

Main case

By way of present petition filed under Section 482 of the Code of
Criminal Procedure, 1973 (for short "the Code"), petitioner has approached
this Court seeking setting aside of impugned order dated 02.05.2022,
Annexure P-15, passed by learned Judicial Magistrate First Class, Abohar
in FIR No.0204 dated 20.12.2018, Annexure P-1, registered for offences

under Sections 498-A and 406 of the Indian Penal Code, 1860, at Police Station City-I, Abohar, District Fazilka, whereby an application filed by the petitioner for permission to go to Australia for a period of six months to take up employment, has been rejected.

Counsel for the petitioner submits that the petitioner is enmeshed in matrimonial litigation and FIR, Annexure P-1, has been registered by his wife-complainant-respondent No.2. He submits that the petitioner was granted anticipatory bail by this Court, which was made absolute vide order dated 03.03.2020, Annexure P-3. Still further, he submits that the investigation is complete and final report under Section 173 of the Code has been presented qua the petitioner and other accused. Counsel asserts that the petitioner is a permanent resident of Australia and vide order dated 18.03.2021, Annexure P-7, passed by this Court, he was granted permission, subject to conditions mentioned therein, to travel to Australia for a period of six months. The time period was extended by this Court vide order dated 18.11.2021, Annexure P-10, and the petitioner returned to India on 01.01.2022 before the expiry of the extended period. He urges that despite being jobless, the petitioner has given an undertaking before this Court and pursuant thereto, he is making payment of arrears of maintenance in ten monthly installments of Rs.25,000/- each. Counsel submits that the petitioner has an offer for an employment from an Australian Company, which was valid till 01.08.2022 and now has been extended till 08.08.2022. He submits that the petitioner be permitted to avail the offer and travel to Australia. By making a reference to affidavit dated 27.07.2022, counsel submits that the petitioner is ready to deposit property papers of his father's

house, which has a valuation of more than Rs.47 lacs, as security and he will abide by any other condition imposed by this Court.

Opposing the petition, learned State counsel as well as counsel representing the complainant-respondent No.2 have urged that the impugned order is revisable and the present petition is not maintainable. It has been asserted that the job offer with the petitioner is not genuine and once permission is granted to the petitioner, he is not likely to return.

Heard counsel for the parties.

The issue of maintainability of the petitioner, raised by the counsel for the respondents deserves to be dealt with at the outset. Under Section 397(2) read with Section 401 of the Code, there is a specific bar to the exercise of revisional power against an interlocutory order. The question as to whether a particular order is an 'interlocutory order' has to be considered in the light of the judgments of the Supreme Court in *M/s Bhaskar Industries Ltd. Versus M/s Bhiwani Denim & Apparels Ltd. and others (2001) 7 SCC 401* and *K.K. Patel and another Versus State of Gujarat and another (2000)6 SCC 195*. Apex Court is of the view that an 'interlocutory order' denotes order of a purely interim or temporary nature, which does not decide or touch the important rights or liabilities of the parties. In other words, an interlocutory order is one which does not finally culminate the criminal proceedings. When tested on this anvil, the impugned order whereby application for permission to travel abroad has been declined, would qualify as an interlocutory order and fall within the ambit of Section 397(2) of the Code. As revision against such an order is barred, an aggrieved person has no other remedy, but to invoke the inherent

powers of this Court. Ergo, instant petition is held to be maintainable.

In order to determine the genuineness of the job offer of the petitioner, this Court vide order dated 06.07.2022 directed him to give the details and documents of offered employment in a sealed cover to the Investigating Officer as the petitioner apprehended that in case the complainant-respondent No.2 comes to know of the details, she will mar his chances as she had done in the past. After enquiry, an affidavit has been filed by the Investigating Officer, whereby offer letter of the employment has been confirmed. On an earlier occasion, the petitioner was permitted to travel to Australia and he returned to India within the time extended by this Court. This Court, therefore, has no doubt about the bonafide of the petitioner.

Hon'ble Apex Court in *Satwant Singh Sawhney Versus D. Ramarathnam, Assistant Passport Officer, New Delhi AIR 1967 SC 1836* and *Smt. Maneka Gandhi Veruss 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.

Considering that the petitioner is an Engineer, who had returned

from Australia earlier, as also that he has an employment offer in hand, which stands duly verified, this Court is of view that the order passed by the Trial Court rejecting his application for permission to travel to Australia is not sustainable and the impugned order passed by the learned Judicial Magistrate First Class, Abohar, deserves to be set aside.

In view of the above discussion, impugned order dated 02.05.2022, Annexure P-15, is quashed. Petitioner is granted permission to travel to Australia for a period of six months subject to the following conditions:-

- (i) Petitioner will deposit with the Area Magistrate/Trial Court concerned, the original title deeds of residential property bearing House No.274, Street No.1, Jodhu Colony, Sri Muktsar Sahib, which is in the name of his father, Sh. Satish Kumar son of Sh. Bhagwan Dass along with an affidavit/undertaking from his father that he will not have any objection in case the property is forfeited in favour of the complainant-respondent No.2 in the eventuality of petitioner failing to return to India;
- (ii) Petitioner will furnish an undertaking before the Trial Court as has been directed by this Court vide order dated 04.08.2022 in CRM-M-1096-2021, ***Gaurav Raheja and others Versus State of Punjab and another***, that he will not object to the framing of the charge and the examination/cross-examination of the witnesses in his absence and that his counsel will keep on appearing

before the Trial Court on each and every date;

(iii) Petitioner will not dispute the identity of the witnesses examined in his absence;

(iv) Petitioner will put in appearance before the Trial Court on his return to India;

(v) While in Australia, petitioner will carry his mobile phone with an active mobile number, which he will provide through his counsel to the Trial Court/Investigating Officer within one week of reaching Australia and that he will keep the phone activated for international calls and will also be available on whatsapp application with an active internet connection.

It is made clear that in case the petitioner does not return to India within the time granted by this Court, the Trial Court shall be at liberty to proceed in terms of the undertaking given before it.

Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

05.08.2022
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No