

HIGH COURT OF PUNJAB AND HARYANA

Bench: Justice Vikas Bahl

Date of Decision: 06.11.2023

CRM-M-55434-2023

Sangat Singh Gilzian Petitioner

Versus

State of Punjab Respondent

Legislations:

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Sections 7, 7A, 13(1)(A)(2), 17-A of the Prevention of Corruption Act, 1988 (as amended by Prevention of Corruption (Amendment) Act, 2018)

Sections 409, 420, 465, 467, 468, 471, 120-B of the Indian Penal Code (IPC)

Subject: Petition under Section 482 Cr.P.C. by the petitioner seeking permission to travel abroad during the pendency of a trial for which he has been granted anticipatory bail.

Headnotes:

Criminal Procedure – Permission to Travel Abroad – Petitioner, facing trial and granted anticipatory bail, sought permission to travel to the USA for personal reasons – Trial Court's denial on grounds of potential abscondment reversed – High Court allows travel, imposing strict

**conditions to ensure return and compliance with legal obligations.
[Paras 1, 2, 10, 11]**

Fundamental Rights – Right to Travel – Citing precedent, the Court acknowledges the fundamental right to travel, emphasizing its importance in the context of personal life and liberty – Conditions imposed to balance this right with the need to ensure legal proceedings are not evaded. [Paras 5, 6, 7]

Judicial Discretion – Granting Permission to Travel – High Court exercises discretion favoring the petitioner’s request to travel, referencing substantial ties to the community, political career, and family events – Contrasts with the trial court's caution against potential evasion of the law. [Paras 8, 9, 10]

Bail Conditions – Compliance and Assurance – Petitioner's compliance with previous bail conditions and his substantial societal ties considered – Assurance provided by return tickets and sureties, including petitioner's wife, deemed sufficient to grant permission to travel. [Paras 2, 11]

Anticipatory Bail – Pending Application – Acknowledgment of pending anticipatory bail application – Petitioner’s commitment to return before the next hearing date noted as a factor in granting permission to travel. [Paras 2, 10]

Equality Before Law – Co-accused Granted Permission – Reference to co-accused granted permission to travel abroad used as a supporting argument for non-discriminatory treatment and equality before the law. [Paras 3, 10]

Referred Cases:

- **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**
- **Satish Chandra Verma v. Union of India, 2019 SCC OnLine SC 2048**

- **Ankur Gupta v. Central Bureau of Investigation, CRM-M-34106-2023, decided on 20.09.2023**
- **Bhupinderpal Singh v. State of Punjab, CRM-M-19734-2022, decided on 30.05.2022**
- **Amit Sureshmal Lodha v. State of Haryana, CRM-M-10143-2022, decided on 14.03.2022**
- **Devinder Sandhu v. State of Punjab, CRM-M-16262-2022, decided on 25.08.2022**
- **Subhash Daulatra Bhojani v. State of Gujarat, Special Criminal Application No.1973 of 2013, decided on 13.03.2015**

Representing Advocates:

Mr. Gautam Dutt for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the first petition under Section 482 Cr.P.C. for seeking permission to go abroad to United States of America from 10.11.2023 to 27.11.2023 during the pendency of trial in case bearing FIR No.07 dated 06.06.2022, under Sections 7, 7A, 13(1)(A)(2) of the Prevention of Corruption Act, 1988 (as amended by P.C. (Amendment) Act, 2018) and Section 120-B IPC (Sections 409, 420, 465, 467, 468 and 471 IPC have been added later on), registered at Police Station Vigilance Bureau, Flying Squad 1, Punjab, at Mohali, District SAS Nagar.

1 Learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the above-said FIR and he had filed a petition bearing CRM-M-30346-2022 seeking the concession of anticipatory bail and the Co-ordinate Bench of this Court, vide a detailed order dated 18.07.2022 (Annexure P-2), was pleased to issue notice of motion and also stayed the arrest of the petitioner, which is continuing till date. It is further submitted that the Co-ordinate Bench of this Court, vide order dated 15.05.2023, had imposed certain conditions, which have also been complied with by the petitioner and the petitioner has joined the investigation and has not misused

the said concession. It is further submitted that the marriage of the petitioner's nephew is to be performed from 15.11.2023 to 18.11.2023 at New York and California and for the said purpose, the wedding card and the venue booking agreement have been referred to, which have been annexed as Annexures P-5 & P-6 along with the present petition. It is stated that the nephew of the petitioner, namely, Karan is a U.S. Citizen and an attorney by profession in USA and he is getting married to Neha, who is also a US citizen, and all the wedding functions are being held at New York and California, which is apparent from the said wedding card. It is further stated that the real niece of the petitioner, namely, Dr. Kailash Kaur's house warming function is to be held at New York from 22.11.2023 to 24.11.2023 at 3 Bridle Path Drive, Old Westbury, New York and a reference with respect to the same has been made to the copy of invitation card (Annexure P-7). It is submitted that apart from the said two reasons, the third reason for the petitioner to visit USA is to visit nephew Surinder Singh, aged 49 years, who had lost his mother and brother and had himself suffered from Chronic heart failure and underwent a heart transplant surgery on 20.09.2023 at Johns Hopkins Hospital in order to prolong his life and he is on mechanical ventilation support. It is further submitted that the petitioner has already purchased air tickets and a copy of the same has been annexed as Annexure P-8 and has submitted that even the return tickets of the petitioner have also been purchased and the said tickets would show that the petitioner would depart from USA on 25.11.2023 and reach Delhi on 26.11.2023. It is argued that the petitioner is a permanent resident of the address which has been given in the present petition and has been involved in public life for 30 years and elected 3 times as an MLA from Tanda Urmur Constituency and remained a Cabinet Minister in the State of Punjab and has also served as President of Punjab Pradesh Congress Committee and has deep roots in the society and is not involved in any other case apart from the present case. It is stated that since only the FIR has been registered against the petitioner and the trial is pending, thus, the petitioner has a right to visit USA to attend the marriage of his nephew and for the house warming function of his niece. It is further submitted that the petitioner had applied for seeking permission to travel abroad, which has been rejected by the trial Court by observing the allegations against the petitioner are serious and in case the petitioner is granted permission to go abroad, there is every likelihood that he would abscond and the said observations have been made on surmises and conjectures without taking into consideration the settled law. It has been brought to the notice of this Court that earlier an application

bearing CRM-44690-2023 in CRM-M-30346-2022 was filed by the petitioner, which was withdrawn, vide order dated 19.10.2023 with liberty to the petitioner to file an application at the first instance before the concerned Court and thereafter, the petitioner had approached the of 14 concerned Court, which had rejected the prayer of the petitioner vide order dated 27.10.2023 (Annexure P-11) and it is thereafter the petitioner had filed the present petition. It is further argued that the petitioner would not object to his identification at any stage of trial and would not change his present lawyer during his stay abroad and would abide by all the conditions, which would be laid down by this Court. It is stated that the wife of the petitioner is residing in India and she, along with one more surety, is ready to give sureties in favour of the petitioner for his return. It is further stated that the co-accused of the petitioner, namely, Daljit Singh, had also applied for permission to go abroad and this Court vide order dated 03.11.2023 passed in CRM-M-53936-2023 has allowed the said petition. In support of his arguments, learned counsel for the petitioner has relied upon judgments of the Hon'ble Supreme Court in "**Maneka Gandhi v. Union of India another**", reported as (1978) 1 SCC

248; and "**Satish Chandra Verma v. Union of India**", reported as 2019 SCC **OnLine SC 2048** and the judgments of this Court in "**Ankur Gupta v. Central Bureau of Investigation**", passed in CRM-M-34106-2023, decided on 20.09.2023; "**Bhupinderpal Singh v. State of Punjab**", passed in CRM-M-19734-2022, decided on 30.05.2022; "**Amit Sureshmal Lodha v. State of Haryana**", passed in CRM-M-10143-2022, decided on 14.03.2022; "**Devinder Sandhu v. State of Punjab**", passed in CRM-M-16262-2022, decided on 25.08.2022; and judgment of Hon'ble Gujarat High Court in "**Subhash Daulatra Bhojani v. State of Gujarat**", passed in Special Criminal Application No.1973 of 2013, decided on 13.03.2015.

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3. Learned State counsel, to whom a copy of the petition has been supplied in advance, is prepared in the matter and has opposed the present petition on the ground that the allegations against the petitioner are serious and prima facie case under the Prevention of Corruption Act is made out against the petitioner and in case the petitioner is permitted to go abroad, then, there is every possibility that he would evade the process of law, flee from justice and would not return back to India to face trial. It is argued that the anticipatory

bail application of the petitioner is pending before this Court and the same is now listed for 29.11.2023. The fact that co-accused of the petitioner, namely, Daljit Singh has been granted permission to go abroad however, has not been disputed.

4. This Court has heard the learned counsel for the parties and has perused the paperbook.
5. Before adjudicating the present case, it would be relevant to refer to some of the judgments, which have been relied upon by the learned counsel for the petitioner.
6. This Court in **Amit Sureshmal Lodha's case (supra)** had referred to several judgments, in which, it was held that in normal circumstances, permission can be granted to the petitioner to go abroad being his fundamental right to travel abroad. The relevant portion of the said judgment is reproduced as under: -

*“This Court, in the case of **Utkarsh Pahwa Vs. Assistant Director (PMLA), Directorate of Enforcement, reported as 2019(1) Law Herald 870**, had, after considering several judgments on the issue, observed that it can be safely concluded that in normal circumstances, permission could be granted to the petitioner to travel abroad as the right to travel abroad is his fundamental right but the same is to be regulated by imposing conditions. The relevant portion of the said judgment is reproduced hereinbelow: -*

“5 The law governing the question of grant of permission to the petitioner for travelling abroad during the pendency of the trial has been elaborately discussed by this Court in authority of Paramjit Kaur vs. State of Punjab's case (supra) in which reliance was placed on Srichand P. Hinduja Versus State through CBI, New Delhi 2002(3) RCR (Criminal) 186 (SC), Arun Kapoor vs. State of Haryana 2004(4) RCR (Criminal) 594 (P&H), Brij Bhushan Singal vs. Central Bureau of Investigation 1994 (3) RCR (Crl.) 498 (P&H), Anjal Kumar @ Angel Kumar vs. State of Punjab 2010(1) RCR (Criminal) 201 and Naginder Singh Rana vs. State of Punjab 2004(3) RCR (Criminal) 912 and on the basis of the said authoritative pronouncements of the Hon'ble Apex Court and this Court, it can be safely concluded that in normal circumstances, permission can be granted to the petitioner to travel abroad being his fundamental right to travel abroad, but the conditions are to be imposed for regulating and securing his presence during the trial.

6. Keeping in view the said ratio of the aforesaid authority of *Paramjit Kaur vs. State of Punjab's case (supra)*, which is applicable to the facts of the present case, in which also the permission has been sought by the petitioner to travel abroad for a short duration for attending the marriage ceremony of his childhood friends and the supporting documents have also been placed on record, I grant permission to petitioner *Utkarsh Pahwa* to travel abroad for attending the marriage ceremony of his childhood friends *Jay* at *Bangkok* during the period from *25.1.2019* to *28.1.2019* and marriage ceremony of *Medha Alhuwalia* at *Turkey* from *08.2.2019* to *09.2.2019* subject to following conditions:-

(i) that the petitioner shall not seek extension of the period of his stay abroad at any ground whatsoever except in case of medical emergency and shall return to India from 1st trip by *29.1.2019* and by *10.2.2019* from the second trip.

(ii) that the petitioner shall not visit any other country except *Thailand* and *Turkey*.

(iii) that the petitioner shall not in any manner tamper with the evidence of the prosecution;

(iv) that the petitioner shall submit copy of his passport before visit and on return, within one week shall produce his passport in the court for placing on record its copy in respect of his said visit record;

(v) that the petitioner shall execute *FDR/bank* guarantee to the tune of *Rs. 40 Lacs*. This amount shall be returned to the petitioner when he will come back from his trips.

7. Resultantly, petition is allowed in the above terms and the impugned order dated *2.1.2019* is set aside.

8. Since the main case has been decided, the pending CM, if any, also stands disposed of.”

The Hon'ble Supreme Court of India in judgment titled

***Satish Chandra Verma Vs. Union of India and others*, reported as *2019(2) SCT 741*, has also held that the right to travel abroad is an important basic human right and the said right also extends to private life- marriage, family and friendship. Relevant portion of the said judgment is reproduced hereinbelow: -**

“5. The right to travel abroad is an important basic human right for it nourishes independent and selfdetermining 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 judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 which are as follows:

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

Although, in the said case, there were no criminal proceedings pending against the appellant therein and the denial to go abroad was on account of lack of vigilance credence but the aforesaid observation of the Hon’ble Supreme Court is very relevant as it highlighted the right to freedom to travel.”

A perusal of the above-said judgment would show that reference was made to the judgment of **“Utkarsh Pahwa Vs. Assistant Director (PMLA), Directorate of Enforcement, reported as 2019(1) Law Herald 870** wherein permission had been granted to travel abroad for a short duration to the petitioner therein for attending the marriage ceremony of his childhood friends.

7. In **Bhupinderpal Singh's case (supra)**, this Court had held as

under: -

“ xxx xxx xxx xxx

A coordinate Bench of this Court in Abhijat Paliwal's (supra) case has held as under:-

“This application has been moved by the applicant/petitioner for seeking permission to travel abroad i.e. United States and Spain for the period commencing from 30.07.2018 to 14.08.2018 for attending the business activities during pendency of the petition.

Petitioner Abhijat Paliwal has filed the petition under Section 438 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.') for grant of anticipatory bail to him in case FIR No.1069 dated 14.11.2017 under

Sections 403, 405, 409, 415, 418, 420, 463, 465, 471 and 120-B IPC at Police Station Chandni Bagh, Distt. Panipat. That petition is pending after issuing notice of motion before this Court and interim order is also in favour of the petitioner. During pendency of said petition, the present application has been moved for granting permission to travel aboard. The case is under investigation as no challan has been presented so far.

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Undisputedly, right to travel is a fundamental right and there is no law depriving a person of such right. Admittedly, the investigation is at the initial stage and the applicant/petitioner has undertaken to visit abroad subject to any terms and conditions to be imposed by this Court or by the investigating agency. He also undertakes to return immediately after expiry of period of two weeks and no prejudice would be caused as the investigation is at the initial stage. The delay in initiating the investigation has been caused because of change of Investigating Officer.

Accordingly, by considering the facts and circumstances of the case, the present application is allowed and the applicant/petitioner is allowed to travel abroad for a period of two weeks i.e. 30.07.2018 to

14.08.2018, subject to following conditions:

(i) The applicant/petitioner is directed to furnish two securities of 10,00,000/- each (a) of 10,00,000/- in cash and (b) 10,00,000/- of immovable property before the Ilaqa/Duty Magistrate within a period of three days;

(ii) He is also directed to file an affidavit giving an undertaking that in case he does not come back from United States and Spain within a period of two weeks from the date he leaves the country, the aforesaid securities shall stand forfeited;

(iii) It is also directed that the applicant/petitioner shall attend the investigation immediately after return to India and to cooperate with the investigation on the dates as directed by the Investigating Officer;

(iv) He is also directed that he shall furnish his address during his stay in aboard;

(v) that he shall not seek extension of his stay abroad on anyground including medical ground;

(vi) that he shall furnish the details of the person to receive the process from the Court during his stay abroad on his behalf.

Sd/-

27.07.2018

(DAYA CHAUDHARY)

JUDGE

The abovesaid case was a case in which the anticipatory bail application was pending, as is in the present case and the interim protection had already been granted to the petitioner therein and an application was filed during the pendency of the said anticipatory bail application and in the said case, the coordinate Bench of this Court after holding that the right to travel abroad is a fundamental right, allowed the petitioner therein to travel abroad, subject to certain conditions. The applicant-petitioner in the present case, vide order dated 05.04.2021, had been granted the interim relief of stay of arrest and subsequently, vide order dated 30.03.2022 was granted interim bail with a direction to join the investigation and also abide by the conditions envisaged under Section 438(2) Cr.P.C. and the

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said case is now fixed for hearing on 01.08.2022.”

8. Petitioner in the present case wishes to visit USA from

10.11.2023 to 27.11.2023 for the following reasons: -

- (i) The nephew of the petitioner, namely, Karan, who is US citizen and is an Advocate by profession in USA is getting married to Neha, who also is a US citizen, from 15.11.2023 to 18.11.2023 at New York and California and to prima facie prove the same, a copy of the wedding card and the venue booking agreement has been annexed as Annexures P-5 & P-6 alongwith the petition.
- (ii) The house warming function of the real niece of the petitioner, namely, Dr. Kailash Kaur is to be held at New

York on 22.11.2023 and 24.11.2023 at 3 Bridle Path Drive, Old Westbury, New York and the said fact is prima facie proved from a copy of the invitation (Annexure P-7).

(iii) It is the case of the petitioner that his nephew, namely, Surinder Singh, aged 49 years, had suffered from Chronic heart failure and had underwent a heart transplant surgery on 20.09.2023 at Johns Hopkins Hospital in order to prolong his life and is on mechanical ventilation support and the petitioner wishes to see him.

9. It is not the case of the State that the said pleas are false or that the card and venue booking agreement are not genuine. The petitioner is stated to be involved in public life since 30 years and has been elected 3 times as an MLA from Tanda Urmur Constituency and remained a Cabinet Minister in the State of Punjab and has also served as President of Punjab Pradesh Congress Committee and has deep roots in the society and is not involved in any other case apart from the present case. The petitioner was granted the concession of anticipatory bail by a Co-ordinate Bench of this Court vide order dated 18.07.2022 and it is not the case of the State that the petitioner has ever misused the concession of said ad-interim bail. The relevant portion of the said order dated 18.07.2022 passed in CRM-M-30346-2022 granting interim bail to the petitioner is reproduced as under: -

“Learned counsel for the petitioner, inter alia, submits that offences alleged in FIR No. 7 dated 06.06.2022 are not made out qua the petitioner from a bare reading of the FIR. It is contended that apart from the fact that there is clear violation of Section 17-A of the Prevention of Corruption Act, present FIR No. 7 has been registered on the basis of disclosure statement made by the accused in another FIR No. 6 dated 02.06.2022 and the investigating officer in the said FIR No. 6 is surprisingly the complainant in this case. Present FIR, it is vehemently urged, is nothing but an exercise of political vendetta against the petitioner, who remained Minister in the previous regime from 26.09.2021 to 08.01.2022 i.e. the date on which Model Code of Conduct was notified. It is further submitted that allegations raised against the petitioner are devoid of any merit inasmuch the petitioner had nothing to do with Kulwinder Singh, to whom some amount is stated to have been handed over by the Contractor who is an accused in FIR No.6. In respect to the allegations regarding purchase of tree guards, learned counsel for the petitioner submits that prosecution itself is

unsure even about the number of tree guards purchased. At the first instance, there is a reference in the FIR to 80,000 tree guards to be purchased, thereafter the number mentioned is about approximately 2400 and then there is uncertainty regarding actual number of tree guards purchased. Furthermore none of the said tree guards were ever purchased from Sachin Kumar from whom the petitioner is stated to have asked for the purchase to be made. In regard to illegal mining carried on 486 acres of forest land in village Jindapur, learned counsel for the petitioner refers to a survey carried out by the Forest Department itself and report dated 06.04.2022 which reflects the forest land in village Jindapur to be 32.25 acres only. FIR qua illegal mining, it is submitted, was earlier registered against the Sarpanch of the area which has later been cancelled. Learned counsel for the petitioner further submits that prosecution in its zeal has also arrested the petitioner's nephew – Daljit Singh, who has nothing to do with the matter and was not even an accused in this case. It is stated that CRM-M-27628-2022 has been filed by the petitioner seeking quashing of FIR No. 7 dated 06.06.2022, which is listed for 25.07.2022 after issuance of notice of motion. Petitioner, it is submitted, is not involved in any other criminal case. He undertakes to join investigation and cooperate fully with the investigating agency. There is no question of the petitioner absconding or not facing proceedings.

xxx xxx xxx xxx xxx

At request, adjourned to 25.07.2022.

Arrest of the petitioner shall remain stayed till the next date of hearing only.

(LISA GILL)

July 18, 2022

JUDGE”

The above-said interim order has been continuing till date and the next date of the case is fixed as 29.11.2023 and the petitioner has undertaken to come to India on 27.11.2023 i.e. prior to the said date.

10. It is thus, apparent that the petitioner had raised debatable arguments with respect to his involvement in the FIR and at any rate, the mere involvement of the petitioner in a criminal case cannot be made the basis to reject his prayer to travel abroad, more so, when the petitioner has undertaken to abide

by all the conditions to be imposed by this Court. The observation made by the Special Court, SAS Nagar, in the impugned order dated 27.10.2023 to the effect that there is every likelihood that the petitioner would abscond from the process of law, are based on surmises and conjectures and have no legs to stand. The settled principle of law has not been considered by the trial Court. Petitioner had even produced on record the return air tickets, which have been purchased by the petitioner, which also shows that the petitioner is to leave USA on 25.11.2023 and would reach Delhi (India) on 26.11.2023. Petitioner has already stated that his wife is residing in India and she, along with one surety, are ready to give sureties for the petitioner's return. The co-accused of the petitioner, namely, Daljit Singh, has already been granted permission to go abroad vide order dated 03.11.2023 passed in CRM-M-53936-2023 by this Court.

11. Keeping in view the above-said facts and circumstances, the present petition is allowed and the impugned order dated 27.10.2023 is set aside and the petitioner is permitted to go to USA from 10.11.2023 to 27.11.2023 subject to the following conditions: -
- (i) The petitioner shall furnish two sureties (one being of his wife Jaswant Kaur) in the sum of Rs.50 lacs each to the satisfaction of the concerned trial Court/Duty Magistrate for ensuring his return from abroad and appearance before the Court.
 - (ii) After the acceptance of the said sureties, the petitioner would be permitted to go abroad from 10.11.2023 to 27.11.2023 subject to the condition that the petitioner would have to come back to India immediately on the lapse of the said period. The concerned trial Court/Duty Magistrate shall permit the petitioner to go abroad for the said period in case, the sureties so given are to the satisfaction of the concerned Magistrate/trial Court and in case, the petitioner also complies with the other conditions imposed vide the present order.
 - (iii) The petitioner shall give an undertaking before the concerned trial Court/Duty Magistrate that the petitioner shall return from abroad on the date so specified and appear before the concerned trial Court/Duty Magistrate for the purpose of trial and would not seek any extension with respect to the same. iv) During the period of the petitioner being abroad, the personal appearance of the

petitioner shall be exempted and the petitioner shall be permitted to appear through his counsel. However, the petitioner would not be entitled to raise the objection that the evidence had been led in his absence.

- v) The petitioner shall not dispute his identity.
- vi) The petitioner shall not in any manner tamper with the evidence of the prosecution.
- vii) The petitioner shall not visit any other country except USA, during the said period for which the permission to travel abroad has been granted by this Court.
- viii) On return, the petitioner shall continue to be bound by the old/previous conditions which were imposed while releasing the petitioner on bail and the conditions imposed for his going abroad, as have been detailed in this order, shall cease to operate.

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