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

CRM-M-2589-2025

Date of decision: 20.01.2025

Baljinder Singh alias Baljinder Singh Sidhu

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Amandeep Singh Saini, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the impugned order dated 20.11.2024 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate, Zira in complaint No.365 dated 26.11.2011 under Sections 406/408/409/420/471/511/120-B/148/149 of IPC, vide which the prayer of the petitioner for going abroad i.e. Canada for a period of six months, has been rejected and further for directing the release of the passport of the petitioner and granting him permission to travel to Canada.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is a permanent resident of Canada and has a settled business there through which he is earning livelihood for himself and his family. He further submits that the petitioner has also approached this Court earlier by way of filing of CRM-M-53278-2023 titled as 'Baljinder Singh @ Baljinder Singh Sidhu' (Annexure P-4) and the Coordinate Bench of this Court vide order dated



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20.11.2023, granted 04 months to the petitioner to visit Canada to attend his domestic work and manage admission of the children in next class. The petitioner has been summoned in the complaint (*supra*) and after this Court has granted the permission to the petitioner, he has returned within the stipulated period and complied with the directions issued by this Court. It is further submitted that the petitioner has not done anything to create unnecessary impediments and delay in the conclusion of the trial and has fully cooperated with the Investigating Agency. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court in ***Parvez Noordin Lokhandwalla Vs. State of Maharashtra and another Criminal Appeal No.648 of 2020 (arising out of SLP (Crl.) No.3420 of 2020)*** decided on 01.10.2020 as well as the judgment of this Court in ***Amit Sureshmal Lodha Vs. State of Haryana CRM-M-10143-2022*** decided on 14.03.2022.

3. Notice of motion to respondent No.1 only in view of the settled law.

4. Mr. Sandeep Kumar, DAG, Punjab puts in appearance on advance notice on behalf of the respondent-State and opposes the prayer made by learned counsel for the petitioner on the ground that there is every possibility that petitioner would flee from the process of law and would abscond from prosecution. However, he could not controvert the fact that the petitioner did not misuse the permission earlier granted to him by the Coordinate Bench of this Court and also complied with the directions issued by the Court and 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***.

5. Having heard learned counsel for the parties and after perusal of



the record, it transpires that the petitioner is involved in the FIR (*supra*) as a result of matrimonial dispute between the sister of the petitioner and her husband and there is nothing on record which would remotely suggest that the petitioner would flee from justice and not join proceedings after he has returned to Canada. 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 purpose cannot be achieved if justice is dispensed only on the anvil of accountability in a mechanical manner, devoid of context and nuance.

6. 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 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”

7. 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. Chadrachud, 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...”

8. 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."

9. Keeping in view the aforementioned discussion, and in the interest of justice the present petition is allowed and the impugned order dated 20.11.2024 (Annexure P-1) is hereby set aside and the learned trial Court is directed to release the passport of the petitioner for enabling him to visit Canada. The petitioner is allowed to travel to Canada, however, subject to the following conditions:

- i. petitioner shall appear before the trial Court within a period of six months from the date of his departure and surrender his passport. Further, he would not seek any extension regarding this;
- ii. petitioner is directed to deposit Rs.5 lakhs before the trial Court in the shape of FDR for ensuring his return and appearance before the Court;
- iii. petitioner shall be represented through his counsel;
- iv. shall not delay/stall the trial proceedings;
- v. shall not dispute his identity as accused;
- vi. shall have no objection if the prosecution evidence is recorded in his absence but in the presence of his counsel;
- vii. shall appear before the trial Court as and when required; and
- viii. any other condition, which the trial Court may impose.



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10. However, nothing observed hereinabove shall be construed as an expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

20.01.2025

Neha

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