
Before V. K. Bali, J.

NAGINDER SINGH RANA,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CrI. M. No. 26988/M OF 2004

10th June, 2004

Code of Criminal Procedure, 1973—S. 482—Corruption charges against petitioner—Released on bail—Permission to go abroad declined by trial Court—Challenge thereto—Application for cancellation of bail filed by State pending in High Court—No interim adverse orders against petitioner—Whether pendency of a criminal case is a valid ground to decline permission to an individual to go abroad—Held, no—Every person is innocent till proved guilty—Going abroad to see children/grand children is a right of an individual—Such right cannot be curtailed only if a criminal case is pending against him—However, steps have necessarily to be taken that a citizen abides by undertaking of returning to country given by him—Petitioner permitted to go abroad subject to conditions imposed.

Held, that cardinal principle of criminal jurisprudence, as applies in this country, is that every person is innocent till proved guilty and further the Court presumes a human being to behave normally and this presumption continues till such time some concrete material, like antecedents of an individual, is brought on record to show that he shall not behave in normal fashion. If, therefore, a person might undertake to do a particular action, the Court should presume that he shall do so unless there be reasons available from which it could be gathered that he shall not abide by the undertaking given by him. Learned Judge has not kept in mind either of these two principles. Fundamental right or civil right cannot be curtailed only if a criminal case is pending against a person and surely, to go abroad to see his children or grand children is a right of an individual.

(Para 5)

Further held, that insofar as pendency of corruption case against the petitioner is concerned, he is admittedly on bail and even

though application for cancellation of the same has been moved, the State has not been able to secure even any interim adverse order against the petitioner. The grounds for declining permission to go abroad, as mentioned by learned Special Judge, do not appear to be correct at all. Pendency of the case is no ground to decline permission to an individual to go abroad. Of course, steps have necessarily to be taken that a citizen abides by the undertaking of returning to the country given by him. It is this course, which is to be adopted in this case instead of declining permission to go abroad. Impugned order is, thus, set aside.

(Paras 6 and 7)

N. S. Dadwal, Advocate, for the petitioner.

Sartej Singh Gill, A.A.G., Punjab, for the respondent.

JUDGMENT

V. K. BALI, J, (ORAL),

(1) Prayer made in this petition filed under Section 482 of the Code of Criminal Procedure is to quash order dated 25th May, 2004 passed by the Additional Sessions Judge, Ludhiana, and in consequence of setting aside the order aforesaid, to permit the petitioner to go to USA for a month.

(2) Permission to go abroad has been declined to the petitioner by the learned Additional Sessions Judge, Ludhiana, by observing that the petitioner is facing a corruption charge. It has been observed that even though the petitioner is on bail in the case aforesaid, but an application for cancellation of bail has been filed by the State, which is pending in the High Court. The Additional Sessions Judge further observed that if allowed to go abroad, the petitioner is not likely to return in India. It has, *inter alia*, been pleaded that from the perusal of the FIR, it would be clear that the petitioner has been falsely implicated in this case and during the investigation, he has produced before the Investigating Officer as well as the Court all relevant documents and his assets, which are mentioned in the FIR and he has given the proof of the same. He is having agricultural land, from which he is having huge income and the said land was purchased with the permission of the department. He is having three daughters

and one son. Two daughters are married abroad and the elder daughter, namely, Shellu Rana is residing in USA and recently she has been blessed with a son. Therefore, the petitioner as well as his wife want to go abroad to see her and newly born baby and regarding that sponsorship has been sent to the petitioner and his family members by his son-in-law (Annexure P-1). After the marriage of the girl, the petitioner along with his family went abroad to attend the reception in USA with the permission of the department. After visiting USA, the petitioner returned back and rejoined his duty and now when his daughter has been blessed with a son, it is the custom in the Rajput community to go and see the child and for that purpose, the whole family members want to go abroad and that can only be done during vacation of the two children, namely, Kajal Rana and Akashdeep Singh Rana. It is then pleaded that when the petitioner was admitted to bail, there was no condition stipulated in the order that he cannot go abroad.

(3) The impugned order has been assailed on the ground that the same has been passed without any application of mind because the Special Judge, while granting bail, has taken into consideration the entire material and has come to the conclusion that the case of the petitioner is based on the documentary evidence but now learned Additional Sessions Judge has totally ignored these facts, while dismissing application for permission to go abroad. The petitioner is having huge property in India and for the same, documents had since already been produced before the Court. Further more, he is a Government employee. He is also having G.P.F. Account, which shows that a sum of Rs. 9,78,082 is already lying in his account and apart from this, he is having sufficient landed agricultural property but these aspects have not been considered while dismissing the application. Daughter of the petitioner has been blessed with a son in USA and it is the custom in Rajput Community to go and see the daughter and her newly born baby but this aspect has not been considered by learned Additional Sessions Judge. The petitioner was only asking permission to go abroad for 30 days and so far challan has not been filed in the Court and the petitioner had undertaken to come back within stipulated time. The petitioner not only has huge property in the country but his other children are also residing in India and, therefore, there was no question for him not to return to India, contends learned counsel representing the petitioner.

(4) The respondent has filed reply wherein, insofar as factual position is concerned, the same has not been denied. It has, however, been pleaded that the petitioner has misused his authority and by adopting corrupt and illegal means has earned more than his sources. From the month of January, 1996 to December, 2000, his total income was Rs. 16,93,450, whereas during this period, he has spent Rs. 25,44,950 and in this way, he has spent Rs. 8,51,500 in excess and has committed offence. It is then pleaded that an application has been filed for cancellation of bail in this Court, which is pending for 22nd July, 2004. The petitioner is stated to be facing serious case and for that reason, it is averred that he should not be allowed to go abroad and the petition should be dismissed.

(5) I have heard learned counsel representing the parties and with their assistance examined the records of this case. Before I may comment upon the respective pleadings of the parties and the arguments, that have been addressed before me, I would like to mention that cardinal principle of criminal jurisprudence, as applies in this country, is that every person is innocent till proved guilty and further that the Court presumes a human being to have normally and this presumption continues till such time some concrete material, like antecedents of an individual, is brought on record to show that he shall not behave in normal fashion. If, therefore, a person might undertake to do a particular act, the Court should presume that he shall do so unless there be reasons available from which it could be gathered that he shall not abide by the undertaking given by him. In the present case, learned Judge has not kept in mind either of the two principles, as have been mentioned above. I would like to add here that fundamental right or civil right cannot be curtailed only if a criminal case is pending against a person and surely, to go abroad to see his children or grand children is a right of an individual.

(6) Insofar as pendency of corruption case against the petitioner is concerned, he is admittedly on bail and even though application for cancellation of the same has been moved, the State has not been able to secure even any interim adverse order against the petitioner. It is not the case of the State that while moving such an application for cancellation of bail, it has expressed even a suspicion that the petitioner would run away from law. No such pleading has been made in the reply filed on behalf of the State.

(7) In totality of the facts and circumstances of this case, the Court is of the firm view that grounds for declining permission to go abroad, as mentioned by learned Special Judge, does not appear to be correct at all. Pendency of the case, as mentioned above, is no ground to decline permission to an individual to go abroad. Of course, steps have necessarily to be taken that a citizen abides by the undertaking of returning to the country given by him. It is this course, which is to be adopted in this case instead of declining permission to go abroad. Impugned order, Annexure P-6, dated 25th May, 2004 is, thus, *set aside*. The petitioner is permitted to go abroad for a month, as asked for by him, but on the condition that he will give an undertaking before the trial Judge that he would be present to face trial after a month from the date he goes abroad, as and when the same is fixed and in that connection, learned trial Judge would ensure that sufficient and proper security is taken from the petitioner so that he is unable to avoid the Court proceedings. On the undertaking, as mentioned above, and on furnishing the security, as may be ordered, to the satisfaction of the trial Judge, the petitioner shall be allowed to go abroad for a month.

(8) The petition is disposed of accordingly.

R.N.R.

Before K. S. Garewal, J.

JASPAL SINGH BEDI,—*Appellant/Complainant*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondent-Accused*

CrI. A. No. 20-DBA OF 1995

2nd November, 2004

Negotiable Instruments Act, 1881—S. 138—Dishonour of cheques on the ground of closure of bank accounts—Trial Court finding respondent guilty of offence under section 138—1st Appellate Court acquitting accused while holding that a person could be held liable under Section 138 only if the cheque that was dishonoured had been issued on an account maintained by him—Whether drawing of a cheque on an account that had already been closed would absolve