

(2010) 11 P&H CK 0544

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-30082 of 2010

Kuldeep Kaur

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: Nov. 2, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 420
- Prevention of Corruption Act, 1988 - Section 5(1), 5(2)
- Punjab Regulation of Colonies Act, 1975 - Section 11, 3, 8

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Judgement

S.S. Saron, J.

Heard learned Counsel for the parties.

2. The Punjab State through Junior Engineer, Office of the Administrator, Urban Estate, Punjab, Jalandhar (Respondent No. 2) has filed the complaint against the Petitioner and others alleging commission of offences u/s 11(i) read with Section 3(i) and Section 8(i) of Punjab Regulation of Colonies Act, 1975 ("Act" - for short). It is alleged that the accused in the said case had sold plots in a colony which results in violation of the provisions of the Act. The case is still pending. The present petition for grant of permission to go to Norway for the period from 7.11.2010 to 10.1.2011 during the pendency of the complaint has been filed.

3. The petition is opposed by the learned Counsel for the Respondents on the ground that earlier the Petitioner was exempted from appearance on 2.4.2002 and thereafter she did not appear and was declared a proclaimed offender on 2.9.2005.

4. After giving my thoughtful consideration to the matter, it may be noticed that the Petitioner was summoned as an accused vide order dated 21.12.1994. The learned trial Court in terms of order dated 4.6.1997 discharged all the accused in the case

including the Petitioner. Against the said order Respondent No. 2 filed a revision petition and the learned Sessions Judge, Kapurthala vide order dated 30.1.2002 set aside the order of discharge and remanded the case for fresh decision.

5. The Petitioner was holding a general power of attorney on behalf of her husband Nirpal Singh, who was a co-accused along with the Petitioner. According to the learned Counsel for the Petitioner after the discharge, the Petitioner had gone abroad with her husband. There a matrimonial dispute arose between the Petitioner and her husband which resulted in an order of divorce being passed on 30.6.2005. The Petitioner though exempted from appearance on 2.4.2002, however, she could not appear, as according to her, her husband did not inform her about the proceedings as their relations were strained. Therefore, she was declared a proclaimed offender on 2.9.2004. It may, however, be noticed that during the trial of the case, the other accused were acquitted by the learned Chief Judicial Magistrate, Kapurthala vide order dated 17.4.2007. The Petitioner filed Criminal Misc. No. 18944 of 2010 for the grant of pre-arrest bail. In the said petition, this Court vide order dated 27.7.2010 issued notice of motion and meanwhile directed the Petitioner to appear in the Court of Chief Judicial Magistrate, Kapurthala. In the event of her arrest, it was ordered that she would be admitted to bail. The Petitioner has appeared in the Court of learned Chief Judicial Magistrate, Kapurthala and was granted bail. Accordingly, the order dated 27.7.2010 granting interim bail was made absolute.

6. The Petitioner now has to go abroad as the entire family of the Petitioner which comprises of her daughter and two sons are residing in Norway. The son of the Petitioner, namely, Amrinder Paul Singh and his wife Amanjot Kaur had a daughter on 13.8.2010. However, the family is unable to celebrate the birth of the daughter as the Petitioner is in India. Therefore, it is prayed that she be given permission to go abroad for a limited duration from 7.11.2010 to 10.1.2011.

7. The Supreme Court in *Srichand P. Hinduja v. State through C.B.I., New Delhi* 2002 (2) RCR 186, granted permission to go abroad to the accused in the said case. The case related to offences punishable under Sections 120B and 420 IPC; besides u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. A plea was raised in the said case that if the applicants therein were permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return back to India to face the trial. The Supreme Court noticed that the applicants therein were Indian Nationals at the time of registration of the FIR and thereafter they had acquired British and Swiss Nationalities. After considering the facts and circumstances of the said case the applicants therein were permitted to go abroad as an interim measure subject to their furnishing adequate sureties.

8. The prosecution that the Petitioner is facing in the present case relates to offences under the Act inter alia alleging that the Petitioner along with other

co-accused had sold plots to make a colony which is impermissible in law. However, the other co-accused, as already noticed, had been acquitted by the learned Chief Judicial Magistrate, Kapurthala. Besides, the Petitioner seeks permission to go abroad for a limited duration. Therefore, in the facts and circumstances, it would be just and expedient that the Petitioner is permitted to go abroad. The apprehension of the learned Counsel for the Respondents that the Petitioner would not return can be safeguarded by imposing certain conditions.

9. Accordingly, the Petitioner is permitted to go abroad for the period from 7.11.2010 to 10.1.2011 subject to the following conditions:

(i) The Petitioner shall execute a personal bond and surety in the sum of Rs. 5 Lacs to the satisfaction of the trial Magistrate undertaking to appear in Court soon after 10.1.2011.

(ii) The Petitioner shall bind herself that she shall return from abroad and appear before the trial Magistrate for the purpose of trial.

(iii) The Petitioner shall furnish one surety in the sum of Rs. 5 Lacs to the satisfaction of learned trial Magistrate for her return from abroad and appearance before the Court.

(iv) On return of the Petitioner from abroad, the conditions imposed for going abroad shall become inoperative and the Petitioner shall continue to be bound by the old bonds and sureties that have already been furnished. During the period the Petitioner is abroad, her personal appearance before the learned trial Magistrate shall be exempted and she shall be permitted to appear through her Counsel.

(v) For the purpose of going abroad after the necessary surety and bonds are furnished the learned trial Magistrate shall release her passport which was deposited by her.

10. The criminal miscellaneous petition shall stand disposed of.

11. Copy of this order be given dasti on payment of fee prescribed for urgent applications.