

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

CRM-M-3304-2021 (O&M)
Date of decision : 09.11.2021

Amit Sureshmal Lodha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Satvik Verma, Sr. Advocate with
Mr. Harsh Gokhale, Advocate and
Mr. Raghav Kakkar, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. B.S. Rana, Sr. Advocate with
Mr. Nayan Deep Rana, Advocate for the complainant.

सत्यमेव जयते

VIKAS BAHL, J.

This is a petition filed under Section 482 of Cr.P.C. for setting aside the order dated 16.12.2020 (Annexure P-2) and order dated 08.01.2021 (Annexure P-1) passed by the Court of Chief Judicial Magistrate, Rewari and Sessions Judge, Rewari, respectively, whereby an application for grant of permission to visit United States of America (for short “USA”) and to release the passport of the petitioner has been dismissed and the criminal revision filed against the said order has also been dismissed. Further, a prayer has been made in the petition to allow the petitioner to visit USA for a period of 30 days from the date of

receiving the passport and also for issuance of directions to the police officials to release the passport of the petitioner confiscated in FIR No.63 dated 17.02.2020 registered under Sections 420, 406, 120-B, 34 of the Indian Penal Code, 1860 (hereinafter to be referred as "the IPC") at Police Station Dharuhera, Rewari.

The brief facts which have given rise to the filing of the present criminal miscellaneous petition are that the petitioner had made an application praying for grant of permission to visit USA for family reunion w.e.f. 18.12.2020 to 10.01.2021. It was the case of the applicant/petitioner that he had been granted the concession of anticipatory bail by the Court of Sessions Judge, Rewari and that the applicant/petitioner had already joined the investigation and that the applicant/petitioner is an Overseas Indian citizen having an Indian Passport No.N2419844 and is married to Mrs. Kimberly Marie, who is a citizen of USA having passport No.514439506 and out of the wedlock, the petitioner has a son named Ayan, who is also a US citizen by birth having passport No.506273592. It was averred that the wife and son of the petitioner are residing in Utah, a state in USA, at the address 584E, Southfork Drive, Draper, UT-84020 and that the petitioner is residing in India at Omkar Building Off. Annie Besant Rd. Worli Mumbai and that the petitioner wanted to visit his wife and son for conjugal union and in order to comply with the directions imposed under Section 438(2) of the Code of Criminal Procedure (hereinafter to be referred as "the Cr.P.C."), the petitioner was taking the prior permission of the Court and had, thus,

filed the said application. It was further averred that the parents of the petitioner were permanently residing in India and even the company owned by the petitioner and the other assets were also in India. It was stated that the petitioner undertook not to violate the conditions of bail and further, to return the passport to the Investigator on his arrival back to India. With the said averments, the application was filed before the Chief Judicial Magistrate, Rewari. Additional Public Prosecutor had opposed the said application on the ground that the petitioner was not cooperating in the investigation and also that the present case was a case under Sections 420, 406, 120-B, 34 of the IPC, and the order of the National Company Law Tribunal (for short 'NCLT') was passed against the petitioner and also that he was not the authorized signatory of the company and the signatures were withdrawn on 24.09.2021 but the petitioner had placed two purchase orders on 17.10.2019 and had also signed two PDC cheques in order to cheat the complainant who had supplied the waste and scrap material. Application was also opposed on the ground that the petition bearing case No.CRM-M-33202-2020 titled as Joginder Singh Vs. State of Haryana and others, had been filed against the anticipatory bail granted to the petitioner by the Sessions Court and the said case was pending before this Court. Additional Public Prosecutor had also pointed out that there were chances of the petitioner fleeing from the course of justice as he was an Overseas Indian Citizen and his wife as well as his son were US citizens and in case, conjugal union was the ultimate/main objective sought, then the wife and son of the petitioner

could also visit India instead of the petitioner going to USA for the family union.

The Chief Judicial Magistrate, Rewari, after considering the said averments and also after hearing the parties, dismissed the application vide order dated 16.12.2020 primarily on the following grounds: -

- i) The petitioner was not cooperating in the investigation.
- ii) The petition bearing CRM-M-33202-2020 for cancellation of bail granted to the petitioner had been filed before the High Court by the complainant i.e. Joginder Singh and the same was pending adjudication at that time.
- iii) The allegations against the petitioner were stated to be serious, inasmuch as after having been suspended from the Board of Directors as per the NCLT order dated 24.09.2019, the petitioner still placed two purchase orders and signed two PDC cheques in order to cheat the complainant.
- iv) If permitted, there was a possibility of the petitioner fleeing from the course of justice and not returning to India after release of his passport.
- v) There was no fundamental right of the petitioner to visit abroad and the permission to visit or not to visit a foreign country was to be decided on the basis of facts and circumstances of the case.

The petitioner filed a Criminal revision against the order dated 16.12.2020 in the Court of Sessions Judge, Rewari. Before the

Sessions Court, apart from reiterating the averments and arguments raised before the Chief Judicial Magistrate, Rewari, it was further argued that the petitioner would return by 30th of January, 2021. Since, the period earlier sought was fast elapsing and the application of the petitioner had not been allowed by the Chief Judicial Magistrate, Rewari, thus, the revised permission to visit USA for a period ranging from 09.01.2021 to 30.01.2021 was sought. The said revision petition was also dismissed primarily on the following grounds:-

- 1) The petitioner was not cooperating in the investigation of the case.
- 2) The petition under Section 482 of Cr.P.C., challenging the grant of anticipatory bail to the petitioner, was pending before this Court.
- 3) If permitted, there was a possibility of the petitioner fleeing from the course of justice and not returning to India after release of his passport.

सहस्रमेव जयते

The abovesaid two orders are the subject matter of challenge in the present petition.

Learned Senior Counsel for the petitioner has vehemently argued that the reasons given by the Courts below for rejection of the application of the petitioner are either non-existent as on the present date, or are irrelevant, or are against the settled principle of law. It has been submitted that the primary reason of rejection given by both the Courts below was the pendency of CRM-M-33202-2020 which had been filed by the complainant-Joginder Singh against the order of grant of anticipatory bail to the petitioner and the said fact is no more relevant inasmuch as this

Court vide judgment dated 01.09.2021 has dismissed the said petition filed by Joginder Singh. Reference has been made to the said order which has been annexed as Annexure P-17. It has been pointed out that while dismissing the said petition, all the aspects, moreso the aspect with respect to the fact that two purchase orders were placed on 17.10.2019, as well as the fact that the petitioner had not allegedly joined the investigation, have already been considered and the said grounds have been rejected, after noticing the fact that the said two purchase orders dated 17.10.2019 were in fact cancelled after the petitioner had learnt the true import of the order dated 24.09.2019 and after considering the order dated 04.01.2021 passed by the Sessions Judge, Rewari vide which the application for cancellation of bail of the petitioner moved by the State, had been withdrawn by stating that the petitioner and other co-accused had joined the investigation. Specific reference has been made to the said order which has been reproduced in the order dated 01.09.2021. It has been submitted that the reading of the said order would show that the factum of pendency of CRM-M-33202-2020 and non-cooperating in investigation and also the allegations based on the merits of the case against the petitioner, cannot possibly come in the way of the petitioner in being granted the permission to go abroad. It is further submitted that it is the fundamental right of every citizen of India, enshrined under Articles 19 and 21 of the Constitution of India, to move freely and to travel freely, including foreign travel, and thus, the same cannot be illegally curbed. It is submitted that the wife of the petitioner as well as son of the petitioner

are both residing abroad and the petitioner has every right to travel abroad for conjugal union. Learned Senior Counsel for the petitioner has also further submitted that the question of non-cooperating in the investigation would not arise inasmuch as in the present case, the challan has already been filed after the completion of the investigation. Learned Senior Counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court titled **Parvez NoordinLokhandwalla Vs. State of Maharashtra and another**, reported as **(2020)10 SCC 77** to contend that even at the appellate stage and at the stage of petition having been filed under Section 482 of the Cr.P.C., the relief with respect to the petitioner travelling abroad can be granted even in case the time period for which the initial travel was sought has elapsed, moreso, when the cause survives. In the present case, it is submitted that since the primary cause was re-union with the family, thus, cause survives even in case, the period mentioned before the Chief Judicial Magistrate i.e. 18.12.2020 to 10.01.2021 as also revised period mentioned before the Sessions Court i.e. 09.01.2021 to 30.01.2021, has elapsed.

Learned Senior Counsel for the petitioner has submitted that in fact, in addition to the abovesaid reasons, there is an additional reason for which it is necessary for the petitioner to go abroad. For the said purpose, reference has been made to the order dated 16.06.2021 passed by the Coordinate Bench of this Court. In the said order, it had been contended that for maintaining the validity of the green card, which has been issued in favour of the petitioner, the petitioner is required to visit

America and failing the same, serious prejudice would be caused to the rights of the petitioner. Learned Senior Counsel for the petitioner has drawn the attention of this Court to Annexure P-6 which is the permanent resident card of the petitioner, specifically stating that the said card would expire on 06.04.2023 and also *prima facie* proving the petitioner to be a permanent resident of USA since 02.04.2011. Further reference has been made to Annexure P-14 wherein Chapter-3 of the US Citizenship and Immigration Services has been provided. Specific reference has been made to Clause 1 which appears at page 205 of CRM-31171-2021 and the relevant portion of the said clause has been reproduced hereinbelow:-

“1. Absence of More than 6 Months (but Less than 1 Year)

An absence of more than 6 months (more than 180 days) but less than 1 year (less than 365 days) during the period for which continuous residence is required (also called “the statutory period”) is presumed to break the continuity of such residence. This includes any absence that takes place during the statutory period before the applicant files the naturalization application and any absence between the filing of the application and the applicant’s admission to citizenship.”

On the basis of the said clause, it has been submitted that the absence of more than 6 months but less than one year, during the period for which continuous residence is required, is presumed to be a break in the continuity of such residence. On this aspect, further reference has also been made to Parvez Noordin Lokhandwalla’s case (Supra) in order to

state that as per the US Immigration and Nationality Act, 1952, the person concerned has to return for a short period for revalidating the green card. Specific reference has been made to sub-Clause (ii) of Clause (C) of the conditions prescribed. Relevant portion of the said judgment of Hon'ble Supreme Court in the abovesaid case containing the said condition is reproduced hereinbelow: -

“On 26 June 2020, a Single Judge (Justice S. K. Shinde) expressed his inability to take up the IA for relaxation of the conditions attached to the grant of interim bail since the order dated 19 May 2020 had been passed by Justice A. S. Gadkari. The contention of the appellant, it may be noted, has been that under the conditions prescribed by the US Immigration and Nationality Act 1952, he has to return for a short period for revalidating the Green Card. Among them are the following:

“(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien-

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer."

On the basis of the abovementioned condition, it has been submitted that serious prejudice would be caused to the rights of the petitioner with respect to his permanent residency in the USA, if he is not granted the said permission.

Learned Senior Counsel for the petitioner has further submitted that in fact, the wife of the petitioner had to undergo an operation for removal of her appendix and for the said aspect, the petitioner has referred to the medical record (Annexure P-5).

Per contra, learned counsel for the State as well as learned Senior Counsel for the complainant-Joginder Singh, have vehemently opposed the present petition. It has been submitted that the petitioner has been constantly changing the period for which the petitioner wishes to go abroad. Initially the said period was 18.12.2020 to 10.01.2021 and during the course of revision filed, it was changed to the period ranging from 09.01.2021 to 30.01.2021. It has been pointed out that at the first stage, reason stated for going abroad was conjugal union. In the present petition filed under Section 482 of Cr.P.C., however, additional reasons have been

given which were never agitated before the first Court or before the revisional Court. The pleas with respect to the petitioner being a green card holder or his wife having to be operated for removal of her appendix, were never the points which were agitated before the Courts below. It is further submitted that in fact, the wife of the petitioner has already undergone the said operation and has now recovered and thus, the said point cannot be taken to permit the petitioner to go abroad.

Learned Senior counsel for the Complainant and State have laid much emphasis on the fact that the plea of the petitioner is not bona fide and there is every possibility that the petitioner would not come back to India in case he is granted the permission to go abroad. It is submitted that the wife and son of the petitioner are citizens of America and that the petitioner has no property in India. Further, no details of bank accounts are forthcoming. It is further submitted that the amount due to the complainant is to the extent of Rs.1,85,50,286/-. Further reference has been made to Annexures C1 and C2 which have been filed alongwith CRM-34170-2021. In Annexure C1, reference has been made to paragraph 2 to highlight the fact that there are as many as 41 cases pending against the petitioner and the company in question i.e., M/s Indsur Global Limited, under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) in various courts in Mumbai, Ahmedabad, Gurugram and Rewari. It is contended that the approximate aggregate value of dispute in the said cases is Rs.25 crores. Further reference has also been made to Annexure C2 which is

order dated 28.07.2021 in which, in the case titled TCI Freight Vs. Indsur Global i.e. complaint No.3 of 2018, non-bailable warrants have been issued to accused Nos.2 to 4 for 04.01.2022. It is the contention of learned Senior Counsel for the complainant that the said accused Nos.2 to 4 includes the present petitioner, although, the complaint in the said case under Section 138 of the Act of 1881 is not available. Reliance has been placed upon judgment of the Hon'ble Supreme Court in **Srichand P. Hinduja Vs. State through CBI, New Delhi** reported as **2002 (3) RCR (Criminal)186** to contend that in the abovesaid case, even where the permission to go abroad was granted, the petitioners were directed to execute a bond for a sum of Rs.15 crores each with a bank guarantee for the like amount to the satisfaction of the Special Judge, in addition to the other conditions. It is submitted that in the said case, the entire dispute was with respect to an amount of Rs.1437 crores but the kickback amount was of Rs.64 crores. It is submitted that in the present case, the petitioner whose wife and son are residing abroad, and does not have any property in India and is also facing several cases, in all likelihood, would not come to India in case permission to go abroad is granted.

Learned counsel for the State has further highlighted that even assuming, the petitioner is to be allowed to go abroad, then also, apart from other conditions, the petitioner should be directed to give a local surety inasmuch as the petitioner is residing in Mumbai and the FIR has been registered in Rewari. However, the fact that in the present case, challan has been presented, has not been disputed.

Learned Senior Counsel for the petitioner, in rebuttal to the said argument, has submitted that as far as the reliance on order dated 28.07.2021 (Annexure C-2) vide which the non-bailable warrants have been issued, is sought to be placed by the Senior Counsel for the complainant, the said case has already been compromised and for that, reference has been made to the order dated 13.10.2021, which has been sent through Whatsapp and the same is taken on record. The said order is reproduced hereinbelow: -

*“TCI Fright Vs. Indsur Global
2018*

03-

Present:- Ms. Manju Rani, counsel for complainant.

File put up on application for withdrawal the present complaint filed on behalf of complainant. By separate statement of complainant counsel Ms. Manju Rani stated that on the instruction of complainant company, he does not want to pursue the present complaint. Kindly same be dismissed as withdrawn. In view of statement, complainant counsel is allowed to withdraw the present complaint. File be consigned to the record room after due compliance.

Announced in Daily Lok Adalat,

(Sarita Solanki)

Presiding Officer Daily Lok Adalat

UID-HR0473

13.10.2021”

Further, to rebut the reliance sought to be placed by the opposing counsel on the Chart as mentioned in Para 2 of Annexure C1, it has been stated that from the said chart, it is nowhere coming out that the petitioner is also an accused in the said cases, nor any fact or document has been produced to show that the petitioner is personally responsible

for any amount as is stated to be outstanding. It is stated that the figure which has been given by learned Senior Counsel for the complainant, to the effect that the dispute in the said cases is about Rs.25 crores, is not even remotely borne out from the record. No documents in support of the said Chart have been annexed other than Annexure C2 regarding which a specific answer has already been given. No objections have been taken with respect to the pendency of the said cases before the Courts below, as the allegations with respect to the alleged dishonor of two cheques which were raised before the Courts below were with respect to the dispute with the complainant and the said cheques were also dishonoured as the same were sought to be encashed at the time when the order of admission of insolvency had already been passed and thus, the cheques could not have been credited. Further, with respect to the outstanding amount of Rs.1,85,50,286/-, it has been argued that the same has been considered by this Court in its order dated 01.09.2021 passed in CRM-M-33202-2020 and that the complainant representing his company M/s Yashu Iron Private Limited had lodged his complaint before the Interim Resolution Professional (hereinafter to be referred as "IRP") and the same figures at Sr. No.4 in Column No.B under the heading "Operational Creditors" and the amount claimed by the company of the complainant therein is Rs.1,85,50,286/. Further reference has also been made with respect to independent forensic audit of the company so as to state that no fraud was found to have been committed as per the provisions of IBC, 2016 and that the purchase orders were also in the name of the petitioner company and

not in the individual name of the petitioner or the other accused.

With respect to the argument raised by the learned Senior Counsel for the complainant and the State to the effect that the petitioner would not come back to India in case the permission to go abroad is granted, learned Senior Counsel for the petitioner has submitted that the petitioner undertakes to abide by all the conditions which are imposed by this Court and also assures the Court that the petitioner would return and in addition to the same, has submitted that the father and the mother of the petitioner are residing in India and the mother of the petitioner is ready to give a surety in favour of the petitioner and that the mother of the petitioner has immovable property worth approximately Rs.35 to Rs.45 lacs which the petitioner and his mother are also ready to furnish as security and in case this Court desires, then an amount of Rs.5,00,000/- can also be furnished in the form of a bank guarantee by the petitioner.

With respect to the local surety, reference has been made to Chapter 33 of the Cr.P.C., moreso Section 441 of Cr.P.C. to contend that no such conditions have been imposed under Section 441 of Cr.P.C. and thus, it has been prayed that the petitioner, who is residing in Mumbai, would not possibly be able to get a local surety in Rewari. It has been submitted that in the present case, an amount of Rs.1,85,50,286/- is recoverable against the company in question, for which the proceedings are pending and apart from the argument which has been raised with respect to 41 other cases, it has been submitted that it is the dispute in the present case which is to be primarily seen by this Court while allowing an application, as has been

moved in the present case. Reference has been made to judgment dated 28.09.2018 passed in **CRM-M-41608-2018** titled **Paramjit Kaur Vs. State of Punjab** to show that in the said case, the petitioner was permitted to go abroad on the execution of a personal bond in the sum of Rs.5,00,000/- with the undertaking that the petitioner was to report back on or before 15.02.2019 and also with further right to the trial Court/Duty Magistrate to impose any further conditions. Reference has also been made to judgment dated 20.04.2018 passed by the Coordinate Bench of this Court in **CRM-M-15550-2018** titled **Surender Singla Vs. State of Haryana** in which permission to travel abroad was granted subject to deposit of Rs.2,00,000/- with the trial Court in addition to the undertaking specifying conditions of forfeiture.

This Court has heard the learned counsel for the parties and has perused the record.

On the basis of the observations made in the impugned orders, the objections raised by the learned Senior Counsel for the complainant and learned counsel for the State and also the arguments raised by the learned Senior Counsel for the petitioner, the following issues/factors arise for consideration in the present case: -

- 1) Pendency of CRM-M-33202-2020 filed by the complainant- Joginder Singh against the order of the Sessions Judge granting anticipatory bail to the petitioner.
- 2) Alleged non-cooperation of the petitioner in the investigation.
- 3) Merits of the allegations made against the petitioner, moreso with

respect to the placing of two purchase orders after the Board of Directors had been suspended vide order dated 24.09.2019 by the NCLT.

- 4) Change of period with respect to which permission is sought for going abroad inasmuch as before the Chief Judicial Magistrate, period was stated to be from 18.12.2020 to 10.01.2021 and before the Sessions Court, it was stated to be from 09.01.2021 to 30.01.2021 and in the present petition, it is stated to be 30 days from the date of receiving the passport.
- 5) The question as to whether the Petitioner has a right to go abroad based on the pleas raised in the present petition.
- 6) In case, permission is to be granted, then the conditions, which are required to be imposed on the petitioner so that the petitioner would not flee from the course of justice.

The said issues/factors are being taken up for discussion hereunder: -

ISSUES NOS.1 TO 3

- (1). Pendency of CRM-M-33202-2020 filed by the complainant-Joginder Singh against the order of the Sessions Judge granting anticipatory bail to the petitioner,**
- (2). Alleged non-cooperation of the petitioner in the investigation &**
- (3). Merits of the allegations made against the petitioner, moreso with respect to placing of two purchase orders after the Board of Directors had been suspended vide order dated 24.09.2019 by the NCLT): -**

The petition bearing No.CRM-M-33202-2020, had been dismissed by this Court vide judgment dated 01.09.2021. While deciding the said case, the aspect with respect to the alleged non-cooperation of the petitioner in the investigation of the case had also been considered. The

merits of the case, including the allegations with respect to two purchase orders having been placed by the petitioner after the Board of Directors had been suspended vide order dated 24.09.2019 by the NCLT, had also been considered. The relevant portion of the judgment dated 01.09.2021 is reproduced hereinbelow: -

“xxx xxx xxx

It has been observed in the impugned order that the two purchase orders dated 17.10.2019, which were placed on behalf of the accused-company had been cancelled on learning of the actual impact of the Order passed by the NCLT, Mumbai and no goods were ever supplied to the accused persons by the complainant party on the basis of the above two orders. The said fact is not disputed before this Court. It is further observed in the impugned Order that all documents relating to the case are in the office of the accused-company which is now under the control of the IRP. It was also observed that the custodial interrogation is not required because the entire case is based upon documentary evidence. Conditions with respect to furnishing of bonds to the satisfaction of the Investigating Officer and not to leave the country without prior permission of the Court and other conditions have also been imposed. The Sessions Judge, Rewari has referred to the facts of the case as well as, arguments raised by both sides and has granted anticipatory bail by a reasoned order. This Court finds that there is no circumstance much less, strong or overwhelming circumstance to set aside the impugned Order.

It is further observed that with respect to every

argument raised/allegation made by the Learned Senior Counsel for the Petitioner, there is a plausible argument/defence put forth by the Learned Senior Counsel for the Respondent No. 3 to 5. With respect to the argument on behalf of the Petitioner that the two purchase orders were given on 17.10.2019, i.e. after the passing of the Order dated 24.09.2019, it has been argued on behalf of the Respondent no 3 to 5 that admittedly, no goods were received in pursuance of the same and the said orders were cancelled after the Order passed by the NCLT, Mumbai was uploaded on the website and the true impact of the same was understood and in case, the accused persons had any fraudulent intention, then they would not have written Letters dated 30.10.2019 and 20.11.2019 informing the complainant-company about the passing of the aforesaid orders.

Xxx xxx xxx

From the above, it is apparent that for every argument/allegation raised, there is a plausible argument/defense put up. This Court does not wish to give an affirmative finding on the same, lest, it would prejudice the case of either of the parties. For the present, suffice it would to say, that the present case is based on documents and has civil tappings and the custodial interrogation of the Respondent Nos. 3 to 5 would not be required and there is no circumstance much less, overwhelming circumstance to interfere with the well-reasoned order passed by the Sessions Judge.

Before parting, this Court wishes to point out that the aspect of non-joining of investigation has been duly defended by the Respondent Nos. 3 to 5 by making a

reference to the Order dated 04.01.2021 (Annexure R3/1) vide which the prosecution had withdrawn their application for cancellation of bail by stating that the respondent nos.3 to 5 have joined the investigation. The relevant portion of the said order dated 04.01.2021 is reproduced hereinbelow:

“State of Haryana Vs. Amit Sureshmal Lodha etc.

Present:-Sh. Harpal Singh, Public Prosecutor for the State.

ASI Sandeep Kumar, PS Dharuhera in person.

Sh. Vivek Tanwar, counsel for the respondents/accused.

Sh. Vivek Tanwar, counsel for the respondents/accused appeared in person. ASI Sandeep Kumar with learned Public Prosecutor for the State vide his separate statement stated that the respondents in the present case have already joined into investigation and in view of the same, they do not wish to pursue with the application for cancellation of bail of applicants/accused Amit Sureshmal Lodha, Sureshmal Lodha and Indu Lodha and withdrawn the same. Heard. In view of the statement, present application for cancellation of bail stands dismissed as withdrawn. File be consigned to record room after due compliance.

January 04, 2021”

Moreover, the Learned Senior Counsel for Respondent nos. 3 to 5 has stated that the Respondent Nos. 3 to 5 are and will always be ready to join the investigation and to cooperate with the Investigating Officer. Further, a period of 8 months has elapsed since

the passing of the impugned order and there are no allegations against the answering respondents that they are either trying to influence the witnesses or have misused the concession of anticipatory bail granted to them.”

A perusal of the order reproduced hereinabove would show that reliance has also been placed upon the order dated 04.01.2021 vide which the prosecution had withdrawn their application for cancellation of bail by stating that the petitioner and other co-accused had joined the investigation. Moreover, it is an admitted case of both the parties that in the present case, the investigation has been completed and the challan has been filed. Further, on the question of merits, the allegations in the present case are not such so as to disentitle the petitioner to travel abroad. Thus, the first three issues are decided in favour of the petitioner and it is held that the said three issues would not come in the way of the petitioner being granted the permission to travel abroad.

ISSUE NO.4. Change of period with respect to which permission is sought for going abroad inasmuch as before the Chief Judicial Magistrate, period was stated to be from 18.12.2020 to 10.01.2021 and before the Sessions Court, it was stated to be from 09.01.2021 to 30.01.2021 and in the present petition, it is stated to be 30 days from the date of receiving the passport: -

In para 2 of the judgment passed in Parvez Noordin Lokhandwalla's case (Supra), the Hon'ble Supreme Court has categorically observed that though the time period for which the appellant therein had sought permission to travel abroad had lapsed, the cause survived and thus, in the said case, the appellant therein was permitted to travel abroad. Para 2 of the said judgment is reproduced hereinbelow:-

*“2. The High Court declined to relax the conditions imposed by it for the grant of interim bail on the ground that an FIR has been registered against the appellant. **Though the period during which the appellant sought to travel abroad has lapsed, the cause survives.** The appeal raises interesting issues about the interface between the fundamental right to travel abroad and its curtailment under a judicial order as an incident to regulate conditions governing the grant of bail.”*

In the present case, the primary plea raised by the petitioner is to meet his wife and son who are residing in USA. The said cause was existing at the time of filing of the application at the first stage, at the time of arguments in the revision petition, as well as in the present petition. The cause thus, survives. Moreover, the petitioner cannot be deprived of his right to travel abroad and meet his family members, merely on account of the fact that the period for which he had initially sought the said permission, has lapsed. In the present case, the visit was not for a specific function/event, upon the finishing of which, the cause would cease to survive. For instance, in case a person has to travel abroad to attend the marriage of a near and dear one and the marriage has already been performed or to participate in a particular event and the said event has already taken place, then the cause, depending upon the facts and circumstances of the case, would have invariably lapsed. Thus, the said issue No.4 is also decided in favour of the petitioner.

ISSUE NO.5: The question as to whether the Petitioner has a right to go abroad based on the pleas raised in the present petition.

In the present case, the petitioner had initially made a prayer

to go abroad primarily on the ground of conjugal union since he is an overseas Indian Citizen and his wife as well as his son are residing in Utah, a state in USA, at the address 584E, Southfork Drive, Draper, UT-84020 and also on account of the wife of the petitioner having undergone an operation for removal of her appendix for which reliance has been placed upon the medical record (Annexure P-5) and subsequently, an additional factor, with respect to petitioner being a permanent resident of United States of America and the said residency having an expiration date of 06.04.2023 and in order to keep his rights of said residency alive, him being required to visit USA, has for the first time been raised in the present petition filed under Section 482 Cr.P.C.. For substantiating the prejudice that might be caused to the petitioner, reference has been made to Chapter-3 of the US Citizenship and Immigration Services (Annexure P-14) as well as the judgment of Hon'ble the Supreme Court in Parvez Noordin Lokhandwalla's case (Supra), relevant portion of which has been reproduced hereinabove.

Learned Senior Counsel for the complainant and learned counsel for the State have raised an objection to the raising of an additional plea by the Petitioner in the present petition filed under Section 482 Cr.P.C. This Court is of the view that the pleas which were raised before the Courts below were in fact, sufficient to entitle the petitioner to travel abroad inasmuch as it is the right of every individual to meet his wife and son, residing abroad and the said right could not be curtailed, on account of pendency of a criminal case against the individual, as the

petitioner in this case. The said right, however, is to be regulated by imposing suitable conditions for securing his presence during the trial.

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 ***Satischandra 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 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 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. In the present case, although, the pleas raised by the petitioner before the Courts below, have been

considered to be sufficient by this Court so as to entitle the petitioner to travel abroad, but it is always open to this Court while exercising its powers under Section 482 of Cr.P.C. to consider any additional/ancillary plea, and thus, in this case, the same may be considered so as to grant permission to the petitioner to travel abroad. The additional plea raised with respect to the petitioner being a permanent resident of USA since 02.04.2011 which is to expire on 06.04.2023, as is apparent from Annexure P-6, as also on the basis of the relevant Chapter of the US Citizenship and Immigration Services, as also the judgment of Hon'ble the Supreme Court in Parvez Noordin Lokhandwalla's case (Supra), goes to show that non-grant of the said permission to the petitioner to go abroad could cause prejudice to the right of the petitioner with respect to his permanent residency. Thus, the said issue is also decided in favour of the petitioner.

ISSUE NO.6: In case, permission is to be granted, then the conditions, which are required to be imposed on the petitioner so that the petitioner would not flee from the course of justice.

Learned Senior Counsel for the complainant as well as learned counsel for the State have very vehemently stated that in the present case, the primary ground for opposing the application for permission to go abroad is that it is certain that the petitioner would not come back to India, in case permission is granted to the petitioner to go abroad. On the said aspect, it has been highlighted that the wife and son of the petitioner are citizens of America and the petitioner is a permanent resident of U.S. since 02.04.2011 and that the petitioner does not have

any immovable property in India. It is further highlighted that, as is apparent, there is no substantial amount in the bank accounts of the petitioner and since there are several cases pending against the petitioner, there is every possibility that the petitioner has filed the present application just to flee from the country, never to come back. The complainant has stated that an amount of Rs.1,85,50,286/- is due to the complainant and there are 41 cases pending against the petitioner and the company in question i.e., M/s Indsur Global Limited under Section 138 of the Act of 1881 in various Courts in Mumbai, Ahmedabad, Gurugram and Rewari. It is submitted that the value of dispute in the said cases is Rs.25 crores. Reference has been made to Annexure C1, wherein the details of the said 41 cases are given. Para 2 of the said Annexure C1 is reproduced hereinbelow: -

“2. That the applicant, with the leave of this Hon'ble Court, prays to place on record additional facts regarding 41 criminal cases pending against the petitioner and the petitioner's company, as listed in the table below:-

Sr. No.	Court	Case type/Case No.	Title as	N.D.O.H.
1	CMM, Esplanade Court Mumbai	Ss Cases SS/2300038/2020 U/s 138 RW 142 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	05/03/22
2	CMM, Esplanade Court Mumbai	Ss Cases SS/2300855/2021 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	29.10.2021
3	CMM, Esplanade Court Mumbai	Ss Cases SS/2300036/2020 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	04/10/21

4	CMM, Esplanade Court Mumbai	Ss Cases SS/2301893/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	13.12.2021
5	CMM, Esplanade Court Mumbai	Ss Cases SS/2301954/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	28.09.2021
6	CMM, Esplanade Court Mumbai	Ss Cases SS/2301221/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	24.02.2022
7	CMM, Esplanade Court Mumbai	Ss Cases SS/2300890/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	04/01/22
8	CMM, Esplanade Court Mumbai	Ss Cases SS/2301924/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	16.12.2021
9	CMM, Esplanade Court Mumbai	Ss Cases SS/2300870/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	21.01.2022
10	CMM, Esplanade Court Mumbai	Ss Cases SS/2300477/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	21.01.2022
11	CMM, Esplanade Court Mumbai	Ss Cases SS/2300550/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	25.11.2021
12	CMM, Esplanade Court Mumbai	Ss Cases SS/2300103/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	01/02/22
13	CMM, Esplanade Court Mumbai	Ss Cases SS/2300148/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	15.12.2021
14	CMM, Esplanade Court Mumbai	Ss Cases SS/2300041/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	20.12.2021

15	CMM, Esplanade Court Mumbai	Ss Cases SS/2302874/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	13.01.2022
16	CMM, Esplanade Court Mumbai	Misc Cases MISC/230247/2019 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	19.01.2022
17	CMM, Esplanade Court Mumbai	Ss Cases SS/2302520/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	28.09.2021
18	CMM, Esplanade Court Mumbai	Ss Cases SS/2302586/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	07/05/22
19	CMM, Esplanade Court Mumbai	Ss Cases SS/2302745/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	17.02.2022
20	CMM, Esplanade Court Mumbai	Ss Cases SS/2293/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	07/03/22
21	CMM, Esplanade Court Mumbai	Ss Cases SS/1797/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	10/01/22
22	CMM, Esplanade Court Mumbai	Ss Cases SS/2121/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	01/01/22
23	CMM, Esplanade Court Mumbai	Ss Cases SS/1470/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	29.11.2021
24	CMM, Esplanade Court Mumbai	Ss Cases SS/961/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	07/04/22
25	CMM, Esplanade Court Mumbai	Ss Cases SS/2057/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	14.02.2022

26	CMM, Esplanade Court Mumbai	Ss Cases SS/357/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	22.11.2021
27	CMM, Esplanade Court Mumbai	Ss Cases SS/1137/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	04/03/22
28	CMM, Esplanade Court Mumbai	Ss Cases SS/1468/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	29.11.2021
29	CMM, Esplanade Court Mumbai	Misc Cases MISC/277/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	30.12.2021
30	CMM, Esplanade Court Mumbai	Misc Cases MISC/1123/2018 U/s 138 RW 141 NI Act	Siemens Financial Services Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	11/04/22
31	CMM, Esplanade Court Mumbai	Ss Cases SS/2239/2017 U/s 138 RW 141 NI Act	Schenker India Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	07/12/21
32	MM Court, Ahmedabad	CC/96416/2018 U/s 138 RW 142 N.I. Act	Crystal Foundry Falaksis Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	21.10.2021
33	AMM, Ballardpier Mumbai	SS/14105/2018 U/s 138 N.I. Act.	Ashapura International Ltd. Vs. Indsur Global Ltd. & Anr.	25.10.2021
34	JMFC/Gurugram	NACT 03/2018 NI Act	TCI Freight Vs. Indsur Global Ltd. & Anr.	04/01/22
35	AMM Bandra, Mumbai	Ss Cases SS 1253/2018 U/s 138 RW 141 NI Act	SBI Global Factors Ltd. Vs. Indsur Global Ltd. & Anr.	11/01/22
36	MM Court, Ahmedabad	CC/96439/2018 U/s 138 RW 142 NI Act	Crystal Foundry Falaksis Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	21.10.2021
37	CMM, Esplanade Court Mumbai	Ss Cases SS/2239/2017 U/s 138 RW 141 NI Act	Schenker India Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	07/12/21

38	MM Court, Ahmedabad	CC/96427/2018 U/s 138 RW 142 NI Act	Crystal Foundry Falaksis Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	21.10.2021
39	CJM, Rewari	NI Act/2733/2019 U/s 138 RW 142 NI Act	M/s Yashu Iron Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	28.10.2021
40	CJM, Rewari	NI Act/2701/2019 U/s 138 RW 142 NI Act	M/s Yashu Iron Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	28.10.2021
41	CJM, Rewari	NI Act/140/2020 U/s 138 RW 142 NI Act	M/s Yashu Iron Pvt. Ltd. Vs. Indsur Global Ltd. & Anr.	28.10.2021

It has been further submitted that the Hon'ble Supreme Court in Srichand P. Hinduja's case (Supra), had imposed conditions to the effect that the petitioners therein were directed to execute a bond for a sum of Rs.15 crores each with a bank guarantee for the like amount to the satisfaction of the Special Judge in addition to the other conditions. Relevant portion of para 3 and para 7 of the said judgment are reproduced hereinbelow: -

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“3. For this purpose it was pointed out to the High Court, that if the accused are 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. It is also pointed out that the appellants were Indian Nationals at the time of registration of the FIR and thereafter they have acquired British and Swiss Nationalities.

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7. Considering the facts and circumstances, for the time being as an interim measure, the appellants, namely, Mr. Srichand P. Hinduja (in Crl. Appeal No..... of 2001

(@ SLP (Crl) 1828/2001) and Mr. Gopichand P. Hinduja (in Crl. Appeal No..... of 2001 @ SLP (Crl) No. 1829 of 2001) are permitted to go abroad on the following conditions:

- 1. Both the appellants would execute a bond for a sum of Rs. 15 crores (rupees fifteen crores) each with a bank guarantee for the like amount to the satisfaction of the Special Judge;*
- 2. On their behalf counsel will remain present on the date of posting of the matter and would not ask for adjournment on the ground that the appellants are not present in India.*
- 3. The appellants will remain present before the Special Judge as and when their presence is needed in the case.*
- 4. If there is any violation of the aforesaid conditions, it would be open to the Special Judge to pass appropriate orders for cancellation of bail of the appellants.*
- 8. In any case, this order would not adversely affect further proceedings in the trial Court and the Court will deal with the matter without being influenced in any way by this order or any observations made in the order passed by the High Court.*
- 9. This interim measure is upto 20th August, 2001 and the matter be listed before this Court on 7th August, 2001 for further hearing and directions.*

Ordered accordingly. ”

On the other hand, learned Senior Counsel for the petitioner

has relied upon judgment of the Coordinate Bench of this Court in Paramjit Kaur's case (Supra), wherein the petitioner was permitted to go abroad on the execution of only one personal bond in a sum of Rs.5,00,000/- with an undertaking that she would report back on or before 15.02.2019. Further, reference has also been made to Surender Singla's case (Supra) to state that in the said case, permission was granted subject to deposit of only Rs.2,00,000/- with the trial Court.

This Court has considered the arguments of the counsel for the parties on the present issue, which is of utmost importance. The amount due to the complainant is stated to be Rs.1,85,50,286/-. This Court is aware of the fact that it is a debatable issue as to whether the petitioner would be personally liable to pay the said amount or not or if it is the company in question which has to pay the said amount. There are 41 cases under Section 138 of the Act of 1881 stated to be pending against the petitioner and the company M/s Indsur Global Limited and the amount involved in the same is stated to be Rs.25 crores by the learned Senior Counsel for the complainant. Although, learned Senior Counsel for the complainant has not been able to produce the complaints filed under Section 138 of the Act of 1881, which would have enabled this Court to come to a *prima facie* conclusion as to what is the total amount due and to what extent is the liability of the petitioner, however, on the other hand, even the learned Senior Counsel for the petitioner has not produced anything to affirmatively controvert the fact that the petitioner is an accused in the said 41 cases. The company in which the petitioner

was on the Board of Directors, can be seen to be accused No.1 in the said complaints under Section 138 of the Act of 1881. There are other parties who have been made accused in the said cases, as is apparent from the title of the cases. In case, the petitioner is not involved in the said cases, even then it was incumbent upon the petitioner to produce the documents substantiating the same. Learned Senior Counsel for the complainant has referred to the order dated 28.07.2021 vide which non-bailable warrants had been issued to accused Nos.2 to 4 in complaint No.3 of 2018 titled as TCI Fright Vs. Indsur Global (Annexure C-2), to show that there are three more accused in Complaint No.3 of 2018, in addition to the Company in question, which are stated to be the petitioner, his mother and his father. While rebutting the said aspect, the Learned Senior Counsel for the Petitioner has referred to the order dated 13.10.2021 (which has been reproduced hereinabove), to state that the matter has been compromised but has not disputed the fact that the Petitioner was one of the three accused in the said complaint. Thus, while imposing conditions, this Court cannot be oblivious of the fact that there are 41 cases under Section 138 of the Act of 1881, as has been detailed hereinabove. In Srichand P. Hinduja's case (Supra), a bond for a sum of Rs.15 crores each with a bank guarantee for the like amount to the satisfaction of the Special Judge was sought from the appellants who were granted the permission to go abroad on the said conditions. The said conditions were imposed with respect to a case in which the dispute was stated to be involving an amount of Rs.1437 crores and the alleged kickback was of Rs.64 crores. Thus, the said

conditions cannot ipso facto be applied to the present case. Reliance placed by the learned Senior counsel for the petitioner on Paramjit Kaur's case (Supra) to contend that only a personal bond amounting to Rs.5,00,000/- was sought from the Petitioner in the said case, does not further the case of the petitioner inasmuch as in the said case, there was no argument raised that the petitioner therein had several cases against her nor any outstanding amount had been stated with respect to which fraud or cheating at the hands of the petitioner therein could be alleged, nor it had been stated that the petitioner therein did not have any immovable property in India. In fact, in the said case, the petitioner therein had earlier gone to Canada and had returned to India in accordance with the permission granted and the conditions imposed and even the proceedings in the trial Court as well as in the civil litigation had been stayed. In fact, in the case of Brij Bhushan Singal, which was considered in the said case, the security sought from the accused therein was for a sum of Rs.25 lacs. Even in Surender Singla's case (Supra), relied upon by the learned Senior Counsel for the petitioner, neither there were any details of the amount with respect to which the Petitioner had allegedly committed cheating or fraud, nor there were any details of any case against the petitioner, rather it had come out that the petitioner and his family members had property in India and that earlier when the trial Court had granted him the permission to travel abroad, he had returned to India within the stipulated time. In the judgment passed by the Coordinate Bench of this Court in Utkarsh Pahwa's case (Supra), the

relevant portion of which has been reproduced hereinabove, the petitioner therein had been directed to execute FDR/bank guarantee to the tune of Rs.40 lacs even in a case where it was argued by the petitioner that he had sufficient liquid assets and immovable property in India and although, there were no serious objections raised with respect to the financial status of the petitioner therein. Further, another Coordinate Bench of this Court in **Paramjit Singh and others Vs. State of Punjab, CRM-3400-2011, decided on 23.02.2011** had granted permission to the petitioner therein to go abroad while imposing conditions including the condition/undertaking to the effect that in the event of failure to return from abroad, he would have no objection if the land measuring 64 kanals 9 marlas, which was owned by the petitioner therein, would be attached and disposed of in accordance with law. Relevant portion of the said judgment is reproduced hereinbelow:-

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Learned counsel for the appellant-applicant has also stated that the land measuring 64 Kanals which is owned by the appellant-applicant is of substantial value and he is ready to keep the same as security for his return from England after a period of two months.

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(i) That the appellant-applicant shall execute a personal bond and surety in the sum of Rs.5 lacs to the satisfaction of the learned Chief Judicial Magistrate, Jalandhar with an undertaking to appear in Court soon after the expiry of two months from the date he shall leave the country. (ii) The appellant-applicant shall bind himself that he shall return

from abroad and appear before the learned Chief Judicial Magistrate, Jalandhar. The appellant-applicant shall furnish one surety in the sum of Rs.5 lacs to the satisfaction of the learned Chief Judicial Magistrate, Jalandhar for his visit abroad and then to appear before the said Court. (iii) The appellant-applicant shall file an undertaking that in the event of his failure to return from abroad, he would have no objection if the land measuring 64 Kanals 9 Marlas as mentioned in the Jambandi for the year 2004-05 (Annexure P5) is attached and disposed of in accordance with law. On return from abroad, the conditions as imposed upon the appellant-applicant for going abroad will become inoperative and the appellant-applicant shall continue to be bound by the old bonds and sureties that have been furnished by him while being released on bail on 30.11.2010.”

In another case, titled **Dr. Mangal Singh Sandhu Vs. State of Punjab**, reported as **2018(2) Law Herald 1077**, the Coordinate Bench of this Court, while allowing the petitioner to go abroad, directed the petitioner therein to execute a personal bond and surety in the sum of Rs.50 lacs each to the satisfaction of the trial Court. Relevant portion of the said order is reproduced hereinbelow: -

“16. In the totality of the circumstances, prayer of the petitioner seeking permission to proceed to Canada is accepted to the extent of according permission to proceed abroad upto 28.04.2018.

17. Petitioner shall execute a personal bond and a surety in the sum of Rs.50 lacs each to the satisfaction of the trial Court, with an undertaking to appear immediately after the expiry of the period that he has been permitted to travel abroad i.e. after 28.04.2018.

18. *Pursuant to the view taken by this Court, the order dated 01.02.2018 passed by the trial Court at Annexure P-8 is set aside.”*

This Court is required to draw a balance between the right of the petitioner to travel abroad and also right of the prosecution to duly prosecute the petitioner so as to prevent him from evading the trial. From perusal of the various judgments passed by the Hon’ble Supreme Court of India as well as this Court, it is clear that paramount consideration is given to the conditions imposed upon the persons who have been granted the permission to go abroad, so as to ensure that they do not flee from justice.

In the present case, keeping in view the facts and circumstances, moreso the fact that the petitioner does not own any property in his own name in India and the wife and son of the petitioner also reside abroad and also keeping in view the offer made by learned Senior Counsel for the petitioner so as to prove his bonafide, the petitioner is allowed to go abroad for a period of one month subject to the following conditions: -

- 1) The petitioner shall furnish two sureties in the sum of Rs.40 lacs each to the satisfaction of the concerned trial Court/Duty Magistrate for ensuring his return from abroad and appearance before the Court.
- 2) After the acceptance of the surety, the petitioner would indicate the 30 day period for which the petitioner wishes to go abroad, to the concerned trial Court/Duty Magistrate. The said period of one

month should fall within the period of two months starting from the date of present order. The concerned trial Court/Duty Magistrate shall permit the petitioner to go abroad for a period of one month as indicated by the petitioner in case, the said period of one month is falling within two months from the date of this order and 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 as mentioned in the present order.

- 3) The petitioner shall give an undertaking 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.
- 4) Upon the acceptance of the sureties and also upon giving the undertaking, as directed aforesaid and after specifying the date of return in the aforesaid manner, the passport of the petitioner shall be released to him and he would be permitted to go abroad.
- 5) 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.
- 6) The petitioner shall not dispute his identity.
- 7) The petitioner shall not in any manner tamper with the evidence of the prosecution.

- 8) 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.
- 9) The petitioner on returning, within five days from the date of return, shall produce his passport before the concerned trial Court/Duty Magistrate.
- 10) On return, the petitioner shall continue to be bound by the old 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.

Accordingly, Issue No. 6 stands decided, and the present petition is disposed of in the abovesaid terms.

All the pending miscellaneous applications, if any, shall also stand disposed of in view of the abovesaid judgment.

सत्यमेव जयते

09.11.2021

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No