

Certified Copy of Judgment dated 09-04-2014
Amit Gupta vs.State.

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In the court of S.K.Khanduja, Addl.Sessions Judge,Gurgaon.

Case No.23/2014.
Decided on 9.4.2014.

Amit Gupta son of Ramesh Gupta r/o H.No.4, 2nd floor Behind C-65A, Shivaji Park, West Punjabi Bagh, New Delhi.

Revisionist.

Vs.

State of Haryana.

Respondent.



Revision against order dated 14.3.14 passed by
Sh.Rajesh Sharma CJM,Gurgaon.

Present

Sh.V.P.Munjal,counsel for revisionist.
Sh.S.K.Deswal PP for the state assisted
by Sh.V.K.Bhardwaj,Advocate.

Judgement.

This present revision petition has been directed by the revisionist/accused (for short the accused) against the impugned order dated 14.3.14 passed by the court of Sh.Rajesh Sharma, CJM Gurgaon, vide which his application dated 10.3.14 for granting him permission to travel abroad in terms of order dated 6.3.14 passed by this court was dismissed.

2 In brief, in this revision petition the accused is aggrieved with the impugned order branding the same as illegal alleging that Devki

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appearance, which shall be considered by learned lower court as per law. It was further held that he has a right to receive his passport. It is next stated that the accused complied with the said terms and conditions, of the order handed down by this court on 6.3.14 and on 10.3.14, he moved an application for granting him permission to visit USA, where he was having his own house in Virginia, where he is in regular employment as a software engineer, which house he had mortgaged and he was under legal obligation to pay mortgaged amount of 1751 dollars and he was further under a legal obligation to pay monthly sum of approximately 700 dollars as maintenance to his daughter. But now he received communication from his employer that he had to join his job immediately, failing which he will be substituted by someone else. In the said application, it was further stated that his passport was impounded by the police. Thus the request was made to permit him to visit USA with an undertaking to appear in the court on the next date of hearing.

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3 In this revision, the accused has challenged the impugned order to be patently illegal and unsustainable, as according to the learned counsel for accused, learned lower court fell in grave error in rejecting the application foreclosing the right of the accused to visit his country, where he is in regular employment as a software engineer and thus it was a case of violation of his fundamental rights under Art.21 of the

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Constitution of India. He had to visit USA to earn his livelihood and to meet his daughter and he has no criminal track record and he had already stated that he will appear on the next date of hearing in the court. His parents were also arrayed as co accused. Thus the impugned order passed by learned CJM has not gone down well with the accused, who seeks the indulgence of the court to set aside the same and to permit him to travel USA .

4 The present revision petition has been opposed by the learned P.P. who assisted by Sh.V.K.Bhardwaj, Advocate for the complainant, has strongly defended the impugned order by arguing that since the accused is ^{an} affluent person and is not a permanent citizen of America, who will flee from justice, and if he is permitted to leave India for America, then trial will be disrupted as accused is not expected to return back to India ,in as much as after much difficulty, he could be arrested on 12.2.14 after a look out notice was issued against him by the Indian police. It is argued that till date, no dowry articles could be recovered from the accused and number of criminal as well as civil cases are pending between the parties. It is next urged that the accused is a well educated person, having master degree in computer science , so he has good job opportunities in India. His estates are of more than ₹.100 crore. It is argued that the accused played a fraud with his wife

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and secured a fraudulent transfer of the property of his wife. It is further contended that fundamental right of a person under Art.21 of the Constitution can be curtailed by way of due process of law. It is further submitted that the accused is still threatening ,torturing his ex wife by sending e-mails. It is further submitted that the court is not bound by its own observations passed in some other proceedings and since the investigation in this case is not complete, therefore, last submission is made to dismiss the revision.

5 Hearing provided and record perused. In my considered opinion, the impugned order passed by learned CJM is patently illegal and is liable to be set aside for the reasons hereinafter mentioned.

6 At the out set it will be appropriate to observe that this court on a previous occasion in an application filed by complainant Devki Nand Gupta ,for the cancellation of bail under section 439 (2) Cr.P.C.,on 6.3.14, observed that to ensure the participation of the accused during the trial, a condition was imposed that the accused shall not leave India without prior permission of the court and he shall continue to appear before the lower court. However in this regard, he was given liberty by this court to move appropriate application before the lower court to grant him exemption from appearance, which was to be considered by the lower court as per law and it was further observed that he has a right

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to receive his passport, which has been impounded by the police. The court had further enhanced the personal bail bond and surety amount from Rs. 50,000/- to Rs. 5 lac with two sureties in the like amount each. This court has further observed that there was no reason to cancel his bail because strong reasons were liable to be proved. A significant aspect of the matter observed by this court was at page No.5 in the said order ,wherein it was held that since the passport of the accused is stated to have been impounded by the police and he has a right to visit USA, which is providing him bread and butter but at the same time, the accused was held to be under a legal obligation to attend the court proceedings in India and he is required so as to ensure his presence during the trial in the court of learned CJM, Gurgaon.

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7 Having the backing of the said order, the accused moved the application specifically stating in para 5 that under Art.21 of the Constitution of India, he has a right to travel abroad and it is one of the facets of the personal liberty and he cannot be detained in India for indefinitely. Denying him his fundamental right to travel abroad in order to earn his livelihood and to meet his daughter, learned CJM, Gurgaon, in my opinion, adopted a hyper technical and harsh approach in the matter by passing a short and sketchy order. Learned CJM even failed to discuss the authorities as cited by the learned counsel for the

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accused. Learned lower court further failed to mention even a single word as regards the impact of the previous order dated 6.3.14 passed by this court. Learned CJM failed to take into consideration that in the application filed by accused, he had not only sought the relief of granting him permission to travel USA , but also he sought the indulgence of learned CJM to release his passport alongwith all the articles seized during his personal search and further the concerned police officials were sought to be given direction to remove the look out notice issued against him earlier. Had learned CJM appreciated the order passed by this court ,then perhaps impugned order would not have occasioned . Learned CJM did not think it proper to seek the reply of the application and further did not seek the stand of the police investigation agency on the question of return of passport to the accused alongwith other articles taken during personal search of the accused. Learned CJM further failed to take into consideration as to whether there was any point for giving direction to the police to remove the look out notice issued against the accused.

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8 At any rate, learned CJM had misapprehension that since accused was arrested in pursuance of look out notice on 12.2.14 at Delhi Airport and he was likely to abscond and further the accused was aware of the pendency of the case as he was on talking terms

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with his parents, therefore, those circumstances were considered appropriate by learned lower court in rejecting the said application .

9 In my opinion learned lower court failed to appreciate the fact that the personal attendance of the accused before him ,after his enlargement on bail by him on 15.2.14 , for the next date 17.5.14, was not imperative as till date challan has not been submitted in the court. It is a proven fact that the parents of the accused are facing separate trial before the court of Sh.Vivek Choudhary JMIC,Gurgaon, whereas this accused has been attending the court of learned CJM,Gurgaon in the remand proceedings. In the impugned order ,it is mentioned that as and when challan will be submitted ,then ~~the~~ transferring the case of this accused to the said court shall be considered. Thus to my mind, when the learned lower court had adjourned the hearing from 14.3.14 to 17.5.14 for awaiting challan, therefore, it was wholly untenable on his part to dismiss the application filed by the accused ,without taking into consideration the impact of the order passed by this court. Learned lower court seems to have lost sight of the fact that the accused had no criminal track record ; no other criminal case was pending against him. Learned lower court further completely overlooked this fact that the accused was a permanent resident of America as he is green card holder and he has been saddled with the responsibility by an American court to

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pay maintenance to his daughter Ria, who is currently staying in America with his former wife Vidhi Gupta. Learned lower court was swayed by the arrest of the accused on 12.2.14 at Airport in pursuance of look out circular and in view of the fact that he was in touch with his parents being all along aware of the proceedings of the FIR pending against him. Learned lower court rejected the application overlooking the basic fact that Art.21 of the Constitution of India guarantees a right of life and liberty to any person including NRI, i.e. Accused and it takes in its fold the right to travel abroad. Learned lower court completely lost the sight of the fact that by rejecting the application of the accused to travel USA, it had foreclosed the right of the accused to attend to his duties in America where he is admittedly gainfully employed as a software engineer and his said avocation is the source of his livelihood, out of which he has been paying maintenance allowance to his daughter and further he has to pay visits to his said daughter, so as to take care of her well being. Learned lower court did not appreciate the fact that by foreclosing the right of the accused to visit USA, cancellation of his American citizenship was staring in his face.

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10 Nothing has been mentioned in the impugned order that if the accused is permitted to travel America; then he will not return back. Even gathering through the intent of the lower court, in passing the

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impugned order ,as non return of the accused to be a compelling circumstance in India ,yet learned lower court ought to have been circumspect that in the application , the accused had specifically stated in para 6 of application that he would appear on next date of hearing. He attached with the application copy of family order, correspondence between him and his employer, but learned lower court did not spare any time to go through the said important documents including the order passed by this court on 6.3.14.

There was nothing before lower court that the accused in past after getting bail, absented from the court proceedings or for that matter he had a blemish track record in attending the court proceedings. The accused admittedly has not been declared as proclaimed offender .

Undoubtedly he was arrested on 12.2.14 by the Indian police on I.G.Airport in pursuance of look out notice issued against him but the fact remains that FIR was registered in the year 2010 at a time when he and his wife both were putting up in America as again it is a proven fact that the couple left for America on 23.1.06 after their marriage in Gurgaon on 4.12.05 and on 9 April 07, a girl child named Ria was born and they were divorced thereafter by circuit court for Fairfax county in Virginia on 12.8.11 and that divorce petition was filed by accused . Very purpose for which the amount of bail bond and surety bond was

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enhanced from Rs.50,000/- to Rs. 5 lacs with two sureties of like amount each, was to ensure the regular appearance of the accused before the lower court till the conclusion of trial. In my opinion, the presence of the accused before lower court was absolutely unnecessary, rather his presence could have been exempted and at is place the counsel can very well appear .The purpose of the presence of the accused during the trial should not be as a measure of punishment to him so as to deprive him of his right of livelihood and right to see his daughter in America. Therefore, learned lower court was too harsh in his approach in rejecting the application.

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11 In **Satwant Singh Vs.Asstt.Passport officer (1967)3 SCR,525**, it was held by Hon'ble Supreme Court that Article 21 of the Constitution of India encompassed a right of locomotion of the right to travel abroad and even a person in India has fundamental right to travel outside India. The said authority was later followed by Hon'ble Supreme Court in a landmark judgment of Hon'ble Supreme Court in **Menaka Gandhi Vs. U.O,I (1978)1 SCC 248** and it was held that the said right can be denied according to the established procedure , which should be fair. In **Hazari Lal Gupta Vs.Ramesh Parshad and others,AIR 1972 S.C.484**, Hon'ble Supreme Court has held that the court can impose a condition that the accused shall surrender his passport. An authority is

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the impugned order foreclosed the very valuable and substantial right of the accused to visit America to earn his livelihood there, ^{thus} in my opinion, the impugned order finally terminated the proceedings against the accused qua his right to visit America, where he is gainfully employed. In order to fortify the said observation, I place reliance on the ruling of Hon'ble Supreme Court in case **Amar Nath VS.State of Haryana,AIR 1977 S.C.2185 and Madhu Limey Vs. State of Maharastra AIR 1978 S.C.47.**

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13 Learned lower court totally ignored the basic principles as envisaged in section 317 Cr.P.C.,which empowers the court to grant exemption from appearance during the proceedings of court and further failed to notice that even under section 273 Cr.P.C.,in appropriate cases the evidence of the prosecution witnesses can be recorded in absence of the accused. Here in this case, since the accused did not seek the permanent exemption, rather he sought the exemption uptill next date as he was keen to fly back to his home in America, therefore, learned lower court ought to have realised the dire necessity on the part of the accused to attend to his duties and to see his daughter.

14 Hence as a sequel to my above detailed discussion, I accept this revision petition and set aside the impugned order passed by learned lower court, being patently illegal, so far as it rejected the right

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of accused to visit America.The aftermath of this finding is that said application moved by the accused before lower court stands allowed, with the direction that the accused is permitted to travel America and he will return back to India to attend to the court hearing in the court of learned CJM ,Gurgaon on 17.5.14. He is further permitted to take back his passport from SHO DLF Phase II,Gurgaon against proper receipt, after retaining on record its photo copy. However third relief sought by the accused that the direction be given to remove the look out notice issued earlier, cannot be allowed in view of the fact that the said look out notice had already been executed by police as he had already been arrested on 12.2.14 by the police of P.S.D.LF,Gurgaon at I.G.Airport. Nothing expressed above shall be treated as my opinion on the merits of the case. File be consigned to record room.Lower court record be sent back with copy of this judgment. A copy of this order be also sent to SHO P.S.DLF,Gurgaon for information and necessary action.

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Announced 9.4.2014

Addl.Sessions Judge,
Gurgaon.

Note All pages are signed by me.

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ASJ,Gurgaon.

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