

(2007) 09 AHC CK 0060
In the Allahabad High Court

Smt. Parminder Kaur

APPELLANT

Vs

State of U.P. and Mr. Hargursharan Singh

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 482
Penal Code, 1860 (IPC) — Section 467, 468, 471

Citation : (2007) 09 AHC CK 0060

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Judgement

R.K. Rastogi, J.—In this application u/s 482 Cr.P.C. to quash the further proceedings of CrI. Case No. 1434 of 2004 u/s 467, 468, 471, 420, I.P.C., State v. Parminder Kaur, pending in the court of the Chief Judicial Magistrate, Rampur, an application was moved on 1.9.2007 by Smt. Parminder Kaur for listing of the above case, in which a prayer was also made that at the time of grant of bail in the above case the Addl. Sessions Judge, Fast Track Court No. 2, Rampur vide order dated 24.12.2003 had imposed condition upon her that she will give an undertaking that she would not go outside India during pendency of the criminal case against her and that she would deposit her passport within a period of seven days. It was stated in the application that her husband living in America is ill and so she has to go to America to look-after her ailing husband. It has also been stated that she is green card holder of America and this card is to be renewed by 15.9.2007. Therefore, she prayed that passport should be given to her and she should be permitted to leave the country for a period of three months.

Heard learned Counsel for the applicant, learned A.G.A. for the State and the learned Counsel appearing on behalf of O.P. No. 2.

2. Chequered history of the case has been described by the Hon''ble Apex Court in its judgment in Smt. Parminder Kaur Vs. State of U.P. and Another, and I need not repeat it here. The applicant is the wife of elder brother of the complainant-

O.P. No. 2. There is property dispute between these two parties and the allegation against the applicant is that she had committed some forgery in judicial record and so F.I.R. was lodged against her by O.P. No. 2 and on that F.I.R. charge sheet had been submitted by the police after investigation of the case under Sections 467, 468, 471 and 420 I.P.C. upon which cognizance -was taken by the Chief Judicial Magistrate, Rampur. At the time of hearing of the bail application of the applicant, a plea was taken before the Addl. Sessions Judge that since the allegations were regarding forgery in the judicial record, cognizance of the case was barred in the absence of complaint by the court concerned in view of section 195 Cr.P.C. The learned Addl. Sessions Judge, prima facie agreeing with the above contention passed bail order in favour of the applicant ordering that she may be released on executing a personal bond of Rs. 50,000/- with two sureties of the like amount and on giving an undertaking that she would not go outside India during pendency of the case and she would deposit her passport in court within seven days. The applicant challenged this order by filing Crl. Misc. Application No. 4290 of 2004 in this Court and that application was disposed of by Hon"ble R.C. Deepak, J. vide his order dated 3.6.2004, relevant portion of which is as under:

Under the facts and circumstances of the case the condition No. 1 imposed upon the applicant, to the effect that the applicant shall not leave India till the conclusion of the trial in the aforesaid case, shall remain suspended for a period of 2 months from today and the Pass Port of the applicant so deposited shall be released in her favour forthwith subject to her furnishing a personal bond of Rs. 1,00,000/-.

With these observations the application is disposed of.

3. After passing of the above order passport was given to the applicant and she went to America. She was scheduled to return back on 6.8.2004 on expiry of the period of two months. This period was, however, extended by three weeks. The extended period also expired on 27.8.2004. On this date also she did not appear and did not deposit her passport and then O.P. No. 2 moved an application for taking action against her. This application was disposed of by Hon"ble R.C. Deepak, J. on 23.11.2004 with the following observations:

The present application has been moved on behalf of the opposite party with a prayer that the above named applicant has flouted the order of this Court. She be directed to deposit the pass port and necessary orders be also passed. Since the applicant is an old and ailing lady of 75 years" age, it appears that under some misunderstanding, she could not deposit the pass port. So I am not inclined to pass any adverse order against her. She is directed to deposit the pass port in the trial court within a week from today.

With these observations, the modification application is disposed of.

4. This order was challenged by the applicant before Hon"ble Apex Court by filing SLP (Crl.) No. 6163 of 2004 and it was decided by the Apex Court vide its

judgment dated 14.3.2007 reported in Smt. Parminder Kaur Vs. State of U.P. and Another, referred to above. The Hon"ble Apex Court disposed of this application with the following observations:

26. During the hearing of the Special Leave Petition, the learned Counsel for the petitioner, on instructions, submitted before us that the petitioner has complied with the directions of the learned Single Judge dated 23rd November, 2004, and deposited her passport in the trial court within the stipulated period.

27. In view of the subsequent development, this Special I Leave Petition does not survive and it stands disposed of having rendered infructuous.

5. It further appears that the applicant again moved an application before the Chief Judicial Magistrate for permission to go to America and for release of the passport for that purpose. This application was rejected by the chief Judicial Magistrate vide his order dated 6.5.2007, (Annexure No. "E" of the listing application). Then she moved this application before this Court.

6. A preliminary objection was taken by the learned Counsel for the O.P. No. 2 that this application was not maintainable in this form before the Court and the proper course for the applicant was either to move a fresh application u/s 482 Cr.P.C. to challenge the above order of the Chief Judicial Magistrate before this Court or to seek permission from the Hon"ble Apex Court. In reply the learned Counsel for the applicant submitted that the application u/s 482 Cr.P.C, i.e. the present Crl. Misc. Application No. 4313 of 2004, was filed to quash the entire proceedings of the criminal case and so during pendency of that application the present application for release of the passport, which had been deposited under orders of the Court passed in that case, was maintainable and there is no necessity to file afresh application u/s 482 Cr.P.C. He further submitted that on the application of the applicant in the petition for Special Leave to Appeal (Crl.) No.(s) 4867 of 2007, which was moved before the Hon"ble Apex Court against the order of issue of non-bailable warrant against the applicant, the Apex Court had passed the following order on 22.8.2007:

Taken on board.

Issue notice.

Operation of the non-bailable warrants is stayed provided the petitioner appears before the trial court on 27th August, 2007. If the petitioner appears before the trial court, the trial court shall release the petitioner on bail subject to her furnishing an undertaking to the effect that she will continue to appear before it whenever required.

7. It was submitted by the learned Counsel for the applicant that Hon"ble Apex Court while staying execution of the non-bailable warrant against the applicant directed her to. appear before the trial court and further directed the trial court that it shall release the applicant on bail on furnishing an undertaking that she would continue to appear as and when required and the Apex Court has not

imposed any condition regarding deposit of passport, so the the condition imposed by the Addl. Sessions Judge should be treated to have been waived.

8. I do not agree with the above contention of the learned Counsel for the applicant as there is no specific order of the Hon''ble Apex Court for waiving the above condition, but I am in agreement with his contention that the prayer for release of the passport and for permission to go to America is maintainable in the present application u/s 482 Cr.P.C. Hence, I now proceed to consider this prayer on merits.

9. It is to be seen that the applicant has already been permitted once to go to America during pendency of the case and she returned back from America and redeposited her passport, though there was some delay in making the deposit. Under these circumstances, when she now proposes to go to America to see her ailing husband and for renewal of her green card whose period is going to expire on 15.9.2007, I am of the view that she should be permitted to go to America for a period of three months for this purpose, as prayed in her application. The learned Counsel for the applicant cited before me a ruling of Punjab and Haryana High Court in the case of Naginder Singh Rana v. State of Punjab 2004 (3) R.C.R. 912. In this case the accused was facing trial in a corruption case and was on bail. The accused wanted to go abroad to see his children, and return within a month. It was held that it is fundamental right of an individual to go abroad to see his children and pendency of criminal case is not a ground to decline permission to an individual to go abroad.

10. I, therefore, allow the prayer of the applicant for permission to go to America for a period of three months only, so that she may see her ailing husband and may get her green card renewed. This permission shall be granted to her on execution of a personal? bond of Rs. one lakh with an undertaking that on expiry of the above period of three months, she shall not seek its extension and shall return back to India and redeposit her passport in the court. It is further provided that proceedings of criminal case shall not be kept in abeyance during this period. The learned Counsel for the applicant before the trial court shall move an application for her exemption through counsel during this period. If any prosecution witness is produced during this period, evidence of the witness shall be recorded and the learned Counsel for the applicant shall cross examine that witness and shall not take the plea that he is not in a position to cross examine the witness in the absence of the applicant.

Orders accordingly.