

Rajinder Singh vs State

CRR 36- 2026

Present:- Sh.Amandeep Bawa, Advocate for revisionist.
Ms.Anju Narula, Ld.Addl.Public Prosecutor for the State.
Sh.Satnam Singh Advocate for complainant.

Heard.

2. The revisionist is in criminal revision to challenge the impugned order dated 12.05.2026 passed by the Ld.JMIC, Fatehgarh Sahib, whereby his application seeking permission to go to Italy for a period of four months has been declined. The justification afforded by the revisionist is that he is permanent resident of Italy and his professional engagement is at Italy. It is contended by ld.counsel for the revisionist that long break in his stay in India is likely to seriously prejudice his status as Permanent Resident of Italy and also hit his professional engagements. It is further submitted that the applicant needs to earn some money so that he can pay the maintenance expenses to his wife in the proceedings u/S 125 CrPC/ 144 BNSS. It is further prayed that his passport may be released which is expiring soon. He has also undertaken to return to India and also to comply with the conditions, if any, imposed by the Court. Vide the impugned order, the application was declined by the Ld.Area Magistrate, therefore, this revision has been filed.

3. Ld.Addl.Public Prosecutor for the State had appeared for the State. Sh.Satnam Singh, Advocate has filed vakalatnama on behalf of complainant.

4. It is pertinent to mention here that being aggrieved with the impugned order, the petitioner had approached the Hon'ble High Court by way of revision bearing no.CRM- M- 35623- 2026, decided on 06.07.2026,

vide which, the petition was disposed off by the Hon'ble High Court with a direction to the Trial Court to consider and decide the application of the petitioner in accordance with law expeditiously preferably within a period of six weeks from 06.07.2026. Consequently, the present revision was filed.

5. Vide the impugned order, the Ld.Area Magistrate, Fatehgarh Sahib, has taken the view that the accused is permanent resident of Italy, due to which, there is likelihood that he shall not return to India and it has been also taken into consideration that *he was arrested at Delhi Airport on return to India; that he has not produced any specific details regarding the exact nature of employment, particulars of date, address of state; documentary proof regarding work in Italy; that he has earlier remained abroad for a long period and had avoided the proceedings initiated against him; that there is no document that he could not earn anything India, due to which he could not pay the maintenance to his wife; that being a permanent resident of Italy, there are chances that he would not return to India.*

6. The latest position on this aspect is found in the case law titled as **Jonty Chhag versus State of Haryana 2025 PHHC 147419**, in which, it has been observed as under:

More often than not, while dealing with the plea by an accused seeking permission to travel abroad, primarily two two-fold fold objections are raised by the prosecution/ complainant. Firstly, the plea raised is that such an applicant/ accused possesses flight risk. In support of such objection, the ground raised is that it is likely that such applicant/ accused may flee from the process of justice and never ever return to India. The term 'likely' by its inherent semantic ambiguity, consistently eludes any singular, precise or universally applicable definition, thereby mandating its interpretation strictly in accordance with the specific statutory context in which it is deployed. This term demands a nuanced and careful

interpretation. It is imperative that ‘likely’ be construed as denoting a ‘reasonable probability’ or a ‘palpable probability’, rather than a mere ‘nascent possibility’ or a ‘speculative probability’. This distinction is crucial because assessing the ‘likelihood of fleeing’ necessitates a predictive judgment concerning future conduct—an inherently complex and often indeterminate task upon which no conclusive adjudication can be made with absolute certainty. An expansive interpretation of ‘likely’ in this context would effectively amount to erecting an insurmountable legal impediment to the grant of permission to travel abroad. It would invariably result in imposing an oppressive burden on the applicant-accused to prove a negative fact about future events. The adjudicating Court is obliged, to arrive at a considered determination regarding the accused-applicant’s propensity for fleeing, which ought to be premised upon some discernible, tangible and cogent material on record. To adopt a contrary stance, and equating ‘likely’ with that of a ‘mere conceivable probability’, would risk transforming a conditional structures into an unjustified and absolute permission to travel abroad. Secondly, the plea often raised by the prosecution/ complainant is that the trial would procrastinate in case the applicant-accused is permitted to travel abroad. The chances of trial being delayed, by itself, cannot be a ground sufficient to decline any permission to an accused to travel abroad. Indubitably, this concern does remain a pertinent factor to be considered but the same would depend upon factual milieu of a particular case. Remedial measures/ steps can be taken, including but not limited to, seeking an affidavit of the applicant-accused that trial proceedings (including recording of evidence) may go on in his absence but in presence of his counsel and he shall remain bound by such proceedings including recording of evidence. To similar effect would be the situation wherein the criminal proceedings are at the stage of investigation and final report has not been filed/presented—in such a situation as well, the interest of the prosecution can well be secured and the fear(s) expressed can be allayed by taking a similar undertaking from the accused.

12. There is another aspect nay vital aspect of the matter. The

contemporary world, characterized by an accelerating pace of globalization and seamless interconnectedness, has rendered international travel a quotidian necessity rather than a rarefied privilege. This paradigm shift necessitates that the Courts must not remain in vacuo or ensconced in an 'ivory ivory tower', tower', but rather must engage with and adjudicate in consonance with evolving social realities, adopting a pragmatic approach. When seized of an application by an accused entreating for permission to travel abroad, the Court's deliberation must be moored in this modern socio-legal socio legal context. The right to travel abroad has, through the efflux of time and the exigencies of modern life, become so profoundly entrenched and inextricably interwoven with the daily affairs of an individual that it is now an indispensable facet and an ineluctable corollary of the fundamental right to life & liberty, liberty as enshrined under Article 21 of the Constitution. However, it is axiomatic that no right, even one of such constitutional gravitas, is sans limitation(s) or absolute. The right of an individual to travel abroad is not an unbridled license and is amenable to curtailment under under the aegis of judicial scrutiny. It is for the Court to effectuate a delicate and judicial balancing act. This equilibrium must be maintained between the fundamental right of the undertrial/ undertrial/accused to pursue his legitimate affairs, both personal and professional & the collective interests of the society and the prosecution to ensure the unwavering presence of the accused before the trial Court, thereby preventing a accomplice, where justice is, frustrated. Ergo, , it is indubitable that any such plea must be considered on its individual merits pro tanto, avoiding a procrustean application of judicial mind. The ultimate decision must be a holistic exercise in judicial discretion, contingent upon the factual matrix of specific case, ensuring that scales of justice are held even between the liberty of the individual and the imperative of the due process of law. This analysis requires considering several competing factors, including but not limited to; the gravity of a allegations, allegations, the accused person's antecedents and roots; the bona fides of the purpose and duration of travel; the accused person's willingness to furnish security to ensure repatriation, etc. Such adjudication ought to reflect the jurisprudential understanding that liberty is the sine qua non of a civilized society, but its exercise must not be permitted to degenerate into an abuse of process. It

must, thus, demonstrate a proportionate balance, ensuring the restriction on right to travel abroad, is the least restrictive measure necessary, thereby affirming the role of the judiciary as the sentinel on the quivive protecting the constitutional equilibrium. No exhaustive set of guideline(s) to govern, this aspect of the satisfaction of a Court can possibly be laid down, however, alluring this aspect may be. It is neither fathomable nor desirable to lay down any straight jacket formulation in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which even the Legislature has, for best of all reasons, left undetermined. Any attempt in this regard would be, to say the least, a quixotic endeavour. Circumstantial flexibility, one additional, or different fact, may make a sea of difference between conclusions in two cases. Such exercise would thus, indubitable, be dependent upon the factual matrix of the particular case which the Court is in seisin of, since every case has its own peculiar factual conspectus. Such judicial discretion, but of-course, of course, ought to be exercised in accordance with the he principles of justice, equity and good conscience. An age old adage reads, thus: “ The judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight knight-errant errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains ”

7. It is made out from a proper reading of the above observations made by the Hon’ble Punjab & Haryana High Court, that the application of the accused to travel abroad cannot be summarily dismissed, rather, the Court is to apply its judicious mind while dealing with the liberty of the accused, which is a cherished right and cannot be curtailed in a mechanical manner. A perusal of the impugned order reflects that the Learned Trial Court has not referred to the above said ratio of law while making the

observations whereby the application of the revisionist/ accused was dismissed. Thus, the impugned order is prima facie perverse and erroneous as it has failed to take into consideration the latest position of law. No doubt the above ratio of law does not say that permission to go abroad has to be always granted to accused yet, the Id.Area Magistrate while declining the permission to the accused was under the duty to pass a reasoned order and to specifically observe why the case of the revisionist/ accused does not qualify within the ratio of law cited above. The reasons assigned by the Learned Trial Court in the impugned order are more in the nature of imaginative discourse, which is totally detached from the facts of the case. The reasons recorded by the Learned Trial Court fly in the face of the ratio of the case law titled as **Jonty Chhag versus State of Haryana 2025 PHHC 147419**, since such reasons have been assigned by the Learned Trial Court, which have been depreciated upon by the Hon'ble High Court as being not germane to the issue and certainly not being valid reasons to withhold and curtail the liberty of the accused.

8. Moreover, it is reflected from the impugned order that the question involved in the FIR is regarding matrimonial dispute between husband and wife. It is made out from a reading of the FIR that the allegations against the accused are regarding infliction of cruelty upon his wife, which has attracted the offence u/s 498-A IPC and misappropriation of istri dhan of his wife, which has attracted the offence under Section 406 IPC. It is further made out that cancellation report has been already presented before the Learned Trial Court, which is still pending consideration. It is a matter of deep concern that despite the cancellation having been filed more than one year ago, the Learned Trial Court has not passed any order upon the

same. On the other hand, Learned Trial Court is lactating the issue of permission to the accused to go abroad and return of his passport. The said facts have given rise to the following points for determination, which have not been addressed by the Learned Trial Court in the impugned order:-

- i. Whether the personal liberty of the applicant/ accused can be permanently curtailed despite own failure of the Learned Trial Court to pass a reasoned order on the cancellation report presented by the police i.e. whether the applicant can be made to suffer for the fault of the Court;
- ii. Whether the permanent residence status of the applicant can be snatched away due to the own omission of the Learned Trial Court in deciding the cancellation report in a time bound manner;
- iii. Whether the personal liberty of the applicant can be curtailed when the prosecution does not want to prosecute him;
- iv. Keeping in view that the matter is largely of a matrimonial nature and there are no allegations of aggravated form of the crime, can the permission be permanently withheld to the applicant to go abroad;
- v. Moreover, the means of communication have improved with advancement of technology and it is now even permissible to secure presence of accused through video conferencing.

9. This Court is further of the considered view the fact that the Learned Trial Court while deciding the impugned order had assigned such reasons which had no concern with the application in question. The Learned Trial Court had no authority to exceed its jurisdiction and travel beyond its mandate by intruding into personal affairs of the applicant by calling him

upon him to place on record the documents regarding his work and business as this amounts to infringing upon his right to privacy and freedom to carry on the business of his choice as well as his right to live with dignity which are all fundamental rights enshrined in the Constitution of India. On the other hand, the Learned Trial Court has abdicated its jurisdiction by failing to address the real issues, which are mentioned above. Thus, the impugned order is nothing but a non speaking order. It has been given the colour of a speaking order but the reasons assigned are invalid, as discussed above, due to which, it is perverse and illegal order which cannot be sustained in the eyes of the law.

10. In so far as the plea of applicant for return of passport is concerned, his earlier application for that purpose was dismissed by the Learned Trial Court, vide order dated 27.05.2025. Its revision was decided by the Court of Dr.Sonia kinra, Ld.ASJ, Fatehgarh Sahib on 02.02.2026, in which, it was directed that the Learned Trial Court shall decide the application for permission of the accused to go abroad and at that time, the release of passport shall be also considered. This order was assailed before the Hon'ble High Court by way of CRM- M- 15580 – 2026, which was decided on 01.04.2026, vide which, the revision was dismissed but the Learned Trial Court was directed to expedite the decision of the cancellation report.

11. The Learned Trial Court has not even bothered about the directions issued by the Hon'ble High Court by way of order 01.04.2026 passed in CRM- M- 15580 – 2026, vide which, the Learned Trial Court was directed to expedite the decision of the cancellation report.

12. The law on this point has been settled since long in 1978 in the

law titled as **Menka Gandhi vs Union of India 1978 1 SCC 248**, in which it has been laid down that *right to travel abroad is part of the fundamental right to live with dignity under Article 21 of the Constitution of India and it cannot be deprived except by application of procedure established by law*. It is the consistent position of law that the Law Courts have no jurisdiction to withhold the passport of the accused permanently, as held by **Hon'ble Punjab & Haryana High Court, in Captain Anil Batra vs State of Haryana CRM- M- 42638- 2018 decided on 09.10.2018**. It can be withheld/ confiscated only by the order of competent authority but no such order has been passed by the competent authority under the Passport Act, till date, due to which, the Learned Trial Court has no jurisdiction to withhold the passport of the accused. Even renewal of the passport cannot be declined merely on the ground of pendency of the case, but it is a subjective call to be taken by the competent authority under the Passport Act on the basis of application of sound and established principles of law. Thus, this part of the impugned order is also found to be not sustainable in the eyes of law and consequently, it also requires interference.

13. Thus, in the light of the discussion made above, this Court is constrained to observe that the impugned order cannot be sustained as it has failed to take into consideration all the material aspects of the case including the factual position and the applicable position of law.

14. In the above said circumstances, the impugned order is set aside. The matter is remanded to Learned Trial Court with a direction to pass a speaking order in consonance with the observations made by the Hon'ble High Court, in the case law titled as ***Jonty Chhag versus State of Haryana (supra)***. The Learned Trial Court is directed to comply with the order dated

06.07.2026, passed by the Hon'ble High Court in petition bearing no.CRM-M- 35623- 2026, vide which the petition was disposed off by the Hon'ble High Court with a direction to the Trial Court to consider and decide the application of the petitioner in accordance with law expeditiously preferably within a period of six weeks from 06.07.2026. The Learned Trial Court is also directed to comply with the directions issued by the Court of Dr.Sonia Kinra, Ld.ASJ, Fatehgarh Sahib vide order dated 02.02.2026. The Learned Trial Court shall also pass the order specifically with regard to the observations made by this Court and comment upon each of the points for consideration which have been raised above by this Court.

15. A copy of this order alongwith the record of the Learned Trial Court be returned for 23.07.2026. The applicant/ revisionist/ accused is directed to appear before the Learned Trial Court on the date fixed. It is directed that Learned Trial Court shall decide the application of the accused to go abroad within a period of six weeks from 06.07.2026, as directed in the order dated 06.07.2026, passed by the Hon'ble High Court in petition bearing no.CRM- M- 35623- 2026, Accordingly, the revision is **accepted**. A copy of this order be sent to the Ld.Trial Court alongwith the record of the Ld. Trial Court for information and necessary action. Revision petition file be consigned to the record room (Sessions) Fatehgarh Sahib, after due compliance.

Pronounced:

Dated: 18.07.2026

**(Jagbir Singh Mehndiratta),
Additional Sessions Judge,
Fatehgarh Sahib
UID No.PB00296**

(directly dictated on computer)

*Manjinder Singh
(Judgment Writer-II)*

Jagbir Singh Mehndiratta,
Additional Sessions Judge,
Fatehgarh Sahib/ UID No.PB00296