

GAHC010021302023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/62/2023

BANAMALLIKA CHOUDHURY
W/O SYED NASSIF AHMED,
RESIDENT OF NABAGRAHA ROAD, OPPOSITE LUIT RAJPUTANA GUEST
HOUSE, P.S. CHANDMARI, PIN-781003, DIST. KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM,
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24-02-2023

Heard Mr. N.N.B. Choudhury, learned counsel for the applicant as well as Mr. M.P. Goswami, learned APP for the State.

2. This IA has been filed with a prayer to partially modify condition no. (b) passed by this Court vide order dated 09.09.2021 in BA 2008/2021. By the

said order bail was granted to the petitioner on the following conditions:

(b) Shall deposit his Passport/ visa, etc, if any, in the court of the learned jurisdictional Special Judge.

3. In this IA, it is submitted that the applicant is working as Grant Making Consultant at Malala Fund. It is submitted that as per terms and conditions of service, the petitioner is required to travel to various states within the country. It is submitted that recently on 30.01.2023 at 3:08, the petitioner has received an e-mail from her employer i.e. Malala Fund thereby nominating her as a Safeguarding Focal person for Malala Fund in India and she is required to attend training from 13.03.2021 to 16.03.2023 at Water House Square 138-142 Holborn, EC1N2SW, London, United Kingdom, which is part of her job.

4. The learned counsel for petitioner submits that in order to attend the said training program the petitioner has to travel overseas. It is also submitted that another event is scheduled in the month of May at Tanzania. The learned counsel for the petitioner has referred to a communication dated 29.01.2023 by Hajira Zahid, Operations Associate, Malala Fund to the British Deputy High Commission, Kolkata wherein it is specifically mentioned as follows:

“To whom it may concern,

Ms. Banamallika Choudhury has been invited to attend the Country Safeguarding Focal Person's in-person safeguarding training hosted by Malala Fund in London, United Kingdom at WeWork,3 Waterhouse Square 138-142 Holborn, EC1N 2SW. The training is scheduled to hold from the 13th-16th of March 2023.

Malala Fund is a charitable organization working on girls' education issues, co-founded by

Nobel Peace Prize Laureate Malala Yousafzai and her father Ziauddin Yousafzai. Malala Fund is registered as a 501(c)3 United States Charity (Employer Identification Number 81-1397590) and a registered charity in England and Wales (1178655).

Banamallika Choudhury is Grant Consultant at Malala Fund in India and will attend the training as a staff of our organization and the nominated safeguarding focal person for India.

During Banamallika Choudhury's stay in the United Kingdom, Malala Fund will assume full responsibility for her logistics including, but not limited to; a roundtrip airfare between India and the United Kingdom; travel expenses within the United Kingdom; accommodation and meals. Malala Fund will also handle all her arrangements during the visit and will take responsibility to ensure her return to India at the end of the training.

Thank you for your time and attention regarding this request. Should you have any questions I may be reached by the signature contact details below."

5. Accordingly, it is submitted that the said Malala Fund has taken full responsibility ensuring that the applicant would returned to India at the end of the training.

6. This Court had issued a direction on 15.02.2023 to the State to file objection if any. The matter was re-listed on 22.02.2023 and the matter was again fixed for 24.02.2023. Although the State has not filed any objection, the learned APP has raised serious objection to the travel of the applicant on the ground that the petitioner is one of the co-accused in a NDPS case.

7. In view of the hereinbefore communication of the Hajira Zahid, Operations Associate, Malala Fund to the British Deputy High Commission, ensuring that they are taking responsibility for the return of the petitioner after the training scheduled from 13.03.2023 to 16.03.2023 ends, the Court is

inclined to modify the condition no.(b) of the order dated 09.09.2021, passed by this Court in BA 2008/2021 to the following effect.

8. Paragraph 15 of the said order shall now stand modified to the extent that the learned Special Judge-cum-Additional District and Session Judge no.5, Kamrup (Metro), Guwahati who is in sesin of Special case no.153/2021, shall temporarily hand over the passport of the petitioner to the petitioner, namely, Banamallika Choudhury so as to enable her to make travel arrangements and obtain Visa and then to attend the training event from 13.03.2023 to 16.03.2023. Within a week from her return to the Country, she will re-deposit her passport to the Court of learned Special Judge-cum- Additional District and Session Judge No.5, Kamrup (Metro), Guwahati.

9. Moreover, it is also provided that in the event the petitioner is required to travel overseas again, the petitioner is at liberty to move the jurisdictional Court for obtaining the custody of her passport to enable her to travel overseas. If such a prayer is made, the jurisdictional Court shall pass an appropriate order thereon.

10. Therefore, for the purpose of obtaining the custody of her passport, the petitioner shall apply before the learned Special Judge-cum- Additional District and Session Judge no.5, Kamrup (Metro), Guwahati about her travel plan and estimated date of return, upon which the said learned Court shall pass appropriate orders.

11. With the aforesaid modification this IA stands disposed of.

12. This order shall be read together with the order dated 09.09.2021 passed by this Court in BA no.2008/2021.

JUDGE

Comparing Assistant