

Court No. - 90

Case :- APPLICATION U/S 482 No. - 34524 of 2023

Applicant :- Santosh Kumar Chauhan

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Akhilesh Singh, Deeksha Singh, Shivam Yadav

Counsel for Opposite Party :- G.A., Sanjeev Kumar Pandey

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant, Sri Sanjeev Kumar Pandey, learned Standing Counsel for the Union of India, learned AGA and perused the record.

2. The applicant has invoked the inherent jurisdiction of this Court assailing the order dated 8.8.2023 passed by the Additional Civil Judge/Judicial Magistrate, Court No. 12, Deoria (Annexure No. 7) rejecting the Misc. Application No. 1988 of 2023 moved on behalf of the present applicant for granting permission to go abroad in Case No. 8720 of 2021 arising out of Case Crime No. 245 of 2020, under Sections 147, 323, 308, 504 and 506 IPC, Police Station Barhaj, District Deoria.

3. Facts culled out from the averment made in the instant application are that passport issued to the applicant on 21.10.2013 was valid upto 20.10.2023. In the meantime, Opposite Party No. 3 has lodged an FIR, being Case Crime No. 245 of 2020 dated 18.10.2020, against eight accused including present applicant levelling allegation of thrashing, criminal intimidation and attempt to commit culpable homicide showing the date of occurrence of offence on 18.10.2020 at about 7 am. After due investigation, the Investigating Officer has submitted charge sheet dated 4.4.2021 arraigning the five accused persons including present applicant under Sections 147, 323, 308, 504 and 506 IPC. During pendency of trial, present applicant has applied for renewal of his passport and, as per legal requirements, moved an application for permission to go abroad. Aforesaid application was registered as Misc. Application No. 1988 of 2023. Learned trial court concerned has rejected the said application for want of legal provision/jurisdiction, vide order dated 8.8.2023, which is under challenge before before this Court.

4. Learned counsel for the applicant submits that in the matter where criminal proceeding in respect of an offence alleged to have been committed by any accused is pending before the criminal court in India, there is a requirement of court permission to visit abroad. Learned trial court has illegally rejected the application for want of legal provision inasmuch as by virtue of notification dated 25.8.1993 promulgated by the Central Government under Section 22 of Passport Act, 1967, the court concerned is authorized to consider the application for granting permission to go abroad during pendency of the criminal proceedings in respect of offence alleged to have been committed by the accused/applicant. It is further submitted that mere pendency of the criminal case cannot be a fit ground to reject the application for permission to go abroad.

5. Per contra, learned standing counsel for Union of India has vehemently opposed the submission as raised by the learned counsel for the applicant and submits that the present applicant has violated the conditions of the bail order dated 6.1.2021 passed by this Court whereby he was directed to surrender the passport before the court concerned, however, till date he has not surrendered the same. It is further submitted that learned court concerned has rightly rejected the application for permission to go abroad moved on behalf of the present applicant.

6. Having considered the rival submissions advanced by the learned counsel for the applicant and perusal of record, it is manifested that point for consideration in the instant matter lies in a narrow compass as to whether the court is authorized to give permission to accused to go abroad while the trial is pending consideration against him for the offence alleged to have been committed by him. Section 6 of the Passports Act, 1967 enunciates the deterrent provision in issuance of passport; travel documents etc. Section 6 (2) (b) of the Passports Act, 1967, denotes that in case any proceeding is pending against any accused in respect of any offence alleged to have been committed by him before the criminal court in India, his application for passport can be refused. For ready reference, Section 6 (2)(f) of the Passports Act, 1976 is quoted hereinbelow:

“6. Refusal of passports, travel documents. etc. (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant may, or is likely to, engage in such country in

activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with hat or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation:

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

7. A bare perusal of Section 6 (2)(f) of the Passports Act, 1976 evinces that the passport authority can refuse the issuance of passport or travel document for visiting any foreign country on several grounds as mentioned in Sub-section 2 including the ground No. (f) wherein issuance of passport can be refused on the

ground of pendency of criminal case. The provision as enunciated under Section 6 of the Passports Act, 1967 with respect to the refusal of passport/travel documents etc is not an absolute provision declining the person concerned for issuance of the passport. However, same is subject to the provisions of exemption as enunciated under Section 22 of the Passports Act, 1967. For ready reference, Section 22 of the Passport Act, 1967 is quoted hereinbelow:

22. Power to exempt.-Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,-

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.

8. Bare perusal of Section 22 of the Passports Act, 1967 reveals that the Central Government has been authorized to issue a notification in the official gazette subject to some conditions to exempt any person or class of persons from the operation of all or any of the provisions of this Act or rules made thereunder in exercise of its power. Under Section 22 of the Passports Act, 1967, the Central Government has issued a notification in official gazette promulgated on 25th August, 1993. For ready reference, said notification is reproduced hereinbelow:

“MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 25th August, 1993.

G.S.R. 570(E). -In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:

(a) the passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad,

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

[No. VI 401/37/79)

L. K. PONAPPA, Jt. Secy. (CPV)”

9. Under the notification quoted above, the Central Government has exempt the person concerned, against whom criminal proceeding for an offence alleged to have been committed by him is pending before the criminal court in India as enunciated under Section 6(2)(f) of the Passports Act, 1967, subject to some conditions as mentioned in notification. As per the verdict of the notification, such person can be permitted to depart from India if he produces an order from the court concerned permitting him to depart from India before whom criminal case is pending for the offence alleged to have been committed by him. Meaning thereby, the provision of refusal of the passport as enunciated under Section 6 of the Passport Act, 1967 is subject to the exemption exercised by the Central Government under Section 22 of the Passport Act.

10. Having considered the provision, as cited above, in the light of the given circumstances of the present case, I am of the considered opinion that the application moved by the present applicant for the permission to go abroad is liable to be considered under the

provisions of the notification promulgated by the Central Government dated 25.8.1993 and the conditions mentioned therein.

11. Resultantly, to secure the ends of justice, instant application under Section 482 CrPC is hereby allowed and the order dated 8.8.2023 passed by the learned Additional Civil Judge/Judicial Magistrate, Court No. 12, Deoria in Misc. Application No. 1988 of 2023 (State Vs. Santosh and others) is hereby quashed. The Misc. Application No. 1988 of 2023 is restored to its original number and the parties are relegated before the court concerned, who is hereby directed to pass fresh order in the aforesaid application moved on behalf of the present applicant considering the notification dated August 25, 1993 as mentioned above and bail order dated 6.1.2021 passed by co-ordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application under Section 438 CrPC No. 55 of 2021.

Order Date :- 4.12.2023

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