

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9309 of 2023

Applicant :- Fareed Ahmad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lucknow And Another

Counsel for Applicant :- Ashish Raman Mishra

Counsel for Opposite Party :- G.A., Varun Pandey

Hon'ble Shree Prakash Singh, J.

Supplementary affidavit filed by the applicant and the counter affidavit filed by the State are taken on record.

Heard Sri Ashish Raman Mishra, learned counsel for the applicant, Sri S.B. Pandey, Deputy Solicitor General assisted by Sri Varun Pandey, learned counsel for the opposite party no.3, Sri Aniruddh Kumar Singh, learned A.G.A. for the State and perused the material placed on record.

Instant application has been filed with the prayer to quash the impugned order dated 7.7.2023 passed by the court of Judicial Magistrate First, Bahraich in Case Crime No.14907 of 2019, State Vs. Imran Ahmad and others, relating to Case Crime No.230 of 2019, under Sections 420, 406, 120-B I.P.C., Police Station Dargah Sharif, District Bahraich and permit the applicant to depart from India for performing 'Umrah'.

Learned counsel for the applicant submits that opposite party no.2/complainant lodged an F.I.R. with ill motive and mala fide intention on 6.6.2019, wherein the applicant has been named. He submits that the allegation against the applicant is, for committing cheat and fraud and the Investigating Officer without any cogent piece of evidence, filed the charge sheet in hasty manner. He further added that the applicant was granted bail by the trial court, vide order dated 25.3.2022 and there is

no other criminal antecedent of the applicant as has been mentioned in para 16 of the application.

Further contention of the learned counsel for the applicant is that the applicant filed an application for issuance of passport for performing Umrah before the passport authorities on 14.2.2023, by depositing requisite fee and, thereafter, the passport office informed to the applicant that due to pendency of the criminal case, the passport, without permission, cannot be issued for travelling abroad and, thereafter, the applicant moved an application on 3.7.2023 before the trial court concerned for granting him permission for performing Umrah during the pendency of the trial. He added that the trial court, vide order dated 7.7.2023, rejected the application of the applicant for his visit to perform Umrah by saying that there are no other means by which the presence of the applicant/accused may be secured after he is allowed to go abroad and the case is on evidence and the trial is at the advance stage. He added that performing religious rituals is a fundamental right of the applicant and, therefore, that cannot be infringed only on the anticipation that the presence of the applicant would not be procured, if he travels abroad. He submitted that in fact, the applicant is ready to furnish the heavy sureties before the trial court so as to satisfy/convince the trial court that he will not abscond if he travels abroad.

In support of his contention, he has drawn attention of this Court towards the papers appended with the supplementary affidavit dated 7.11.2023, which is willing to be placed before the trial court, as the sureties. He added that the trial court may be directed to accept the aforesaid sureties so as to give permission to the applicant to travel abroad. He submitted that he is seeking permission only for a limited period for

performing Umrah that is from 2nd of December 2023 to 16th December 2023. Therefore, submission is that the trial court may be directed to consider the sureties against his travelling abroad by passing fresh order for the period starting from 2nd December 2023 to 16th December 2023.

Learned counsel for the Union of India submits that since criminal case is pending against the applicant, therefore, unless there is permission by the trial court to travel abroad, the passport cannot be issued.

Learned counsel for the State has also opposed the contention of the learned counsel for the applicant and submits that in fact, the trial is at the advance stage as the same is at the evidence stage and if the applicant is allowed to move abroad, the trial court would face challenges for procuring the presence of the applicant.

Having heard learned counsel for the parties and after perusal of the record, it transpires that an F.I.R. was lodged against the applicant and, thereafter the applicant was released on bail. The applicant wants to travel abroad for performing 'Umrah' from 2nd December 2023 to 16th December 2023 and for this reason, he moved an application before the passport authorities for issuance of the passport. But, the same was rejected with the note that unless there is permission by the court concerned, no passport can be issued. It reveals that the trial court under apprehension that the presence of the accused/applicant would not be ensured, if he is allowed to go abroad, whereas the applicant is ready to furnish heavy sureties before the trial court concerned and a copy thereof is also annexed with the supplementary affidavit filed today. The fact remains that aforesaid permission is sought for limited period of time starting from 2nd December 2023 to 16th December 2023.

In view of the aforesaid, the order dated 7.7.2023 passed by the trial court is hereby set aside.

The matter is remitted back to the trial court concerned to pass fresh order.

The applicant is at liberty to move fresh application by annexing papers of House No.32, Bakshipura, District Bahraich as sureties and if such an application is filed within a period of three days, the trial court shall decide the same within further period of 15 days by speaking and reasoned order.

It is made clear that if the trial court satisfies, the permission will be granted for the limited period, that is, from 2nd December 2023 to 16th December 2023. If such permission is granted, the passport authorities are at liberty to issue passport for the limited period of 2nd December 2023 to 16th December 2023.

Copy of the order shall be issued to the learned counsel for the applicant within 24 hours.

With the aforesaid observations, instant application is **disposed of**.

Order Date :- 7.11.2023
Ram Murti