

Court No. - 28

Case :- APPLICATION U/S 482 No. - 10007 of 2023

Applicant :- Roman Anton Fernandes

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

Counsel for Applicant :- Jai Priya Swapnil

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard Sri Jai Priya Swapnil, learned counsel for the applicant, Sri Aniruddha Singh, learned AGA-I for the State and perused the record.

Instant application under section 482 Cr.P.C. has been moved by the applicant/accused-**Roman Anton Fernandes** with the prayer to quash the order dated 19.08.2023 by means of which application for release of passport has been rejected which was filed in Case Crime No. 02/2018 under sections 201, 204, 420, 467, 468, 471, 120-B of IPC, Section 13 of Prevention of Corruption Act, 1988 and Section 66 of the I.T. Act, 2000, pending before the learned Special Judge, Anti-Corruption CBI Central, Lucknow.

Learned counsel for the applicant while drawing the attention of this Court towards the impugned order dated 19.08.2023 submits that the trial court has even not considered the request of the applicant/accused on merits and has rejected the application moved by the applicant/ accused for release of passport for only on the ground that a Coordinate Bench of this Court vide order dated 23.9.2021 passed in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 6368 of 2020 had directed the applicant to deposit the Passport with the Investigating Officer/ trial court.

It is vehemently submitted that when the applications were moved before the trial court for permitting him to go abroad and also for releasing the passport in his favour for the purpose of such travel, the trial court should have considered the claim / request of the applicant/ accused on merits.

Learned AGA on the hand submits that there is no illegality in the order dated 19.08.2023 passed by the trial court, concerned.

Having heard learned counsel for the parties and having perused the record, it is evident that the applicant Roman Anton Fernandes was granted anticipatory bail by a Coordinate Bench of this Court vide order dated 23.9.2021 passed in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No, 6368 of 2020 and while releasing the applicant on anticipatory bail amongst other conditions the second condition was placed with regard to the surrender of the passport by the applicant, the same is reproduced as under:-

"2. The applicants shall surrender their passports, if any, to the concerned Court/ Investigating Officer forthwith. Their passports will remain in custody of the concerned Court/ Investigating Officer."

The grievance of the applicant/ accused appears to be that he in compliance of the order of this Court had deposited his passport before the trial court and by moving two separate applications permission to travel abroad and release of passport only for that purpose were made, however, the trial court has not even considered the request of the applicant on merits and under the teeth of the order of this Court dated 23.9.2021 passed in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 6368 of 2020 rejected the same by passing the impugned order.

Perusal of the order dated 23.9.2021 passed by the Coordinate

Bench of this Court would reveal that a condition was placed that the applicant shall surrender his passport to the court or Investigating Officer, as the case may be, forthwith and the same appears to have been complied. There is nothing in the order of the Coordinate Bench of this Court dated 23.9.2021 with regard to the consideration of the requests of the applicant to travel abroad and in this regard in the considered opinion of this Court a decision has to be taken by the trial court keeping in view the genuineness of the claim to travel abroad vis-a-vis the apprehension of the prosecution pertaining to the applicant being a 'fly risk'.

For the reasons aforesaid the instant application moved by the applicant/ accused is finally **disposed of** with the direction to the trial court to consider the request of the applicant/ accused for travelling abroad as well as for release of the passport in his favour, afresh, on merits keeping in view the established law in this regard and also after providing an opportunity of being heard to the parties including the prosecution and also keeping in view the apprehension of the prosecution pertaining to the applicant being a 'fly risk'.

It is clarified that this Court has not opined anything on the merits of the claim of the applicant.

Order Date :- 1.11.2023
Mayank