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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrIM No. 1824/202
In CRM (M) No. 790/2024
CrIM No. 1825/2024

Muneer Ahmad Dar Petitioner (s)

Through: Mr. Mudasir Bin Hassan, Adv.

V/s

Union Territory through Police Station Crime Branch
..... Respondent(s)
Through: Mr. Mubashir Majid, Dy. AG

Coram:
Hon'ble Mr. Justice Sanjay Dhar, Judge.

ORDER
27.12.2024

CrIM No. 1824/2024:

For the reasons stated in the application, the same is allowed and the requirement of filing certified copy of order dated 19.09.2024 is dispensed with.

CrIM disposed of.

CRM(M) No. 790/2024:

1. Through the medium of the instant petition, the petitioner has challenged order dated 19.09.2024 passed by the learned Principal Sessions Judge, Budgam whereby application of the

petitioner for grant of NOC regarding issuance of passport has been dismissed.

2. Issue notice to the respondent.
3. Mr. Mubashir Majid, learned Dy. AG enters appearance and accepts notice on behalf of the respondents.
4. Heard and considered.
5. It appears that the petitioner is facing trial before the learned Principal Sessions Judge, Budgam in case arising out FIR No. 35/2019 for offences under Sections 420, 467, 468, 471, 120 B of RPC registered with Police Station, Crime Branch, Kashmir. It also appears that the petitioner had applied for issuance of passport in his favour but the Passport Authority has asked the petitioner to obtain NOC from the court where he is facing criminal trial. Accordingly, the petitioner appears to have approached the learned trial court by way of an application to this effect. However the learned trial court in terms of impugned order has rejected the application of the petitioner by observing that no permission from the said court is required for issuance of passport in favour of the petitioner in terms of the Passports Act.
6. The impugned order appears to have been passed by the learned trial court by observing that there is no provision in the Passport

Act, which enables a criminal court to issue NOC in favour of person facing criminal trial. It seems that the learned Sessions Judge has not approached the prayer of the petitioner in a correct perspective. Since the petitioner is facing trial in criminal case before the learned Sessions Judge, he would obviously be on bail granted to him by the said court or any other court subject to certain conditions.

7. An accused who is released on bail is technically considered to be in the “Constructive Custody” of the court that granted the bail. While he may not be in physical custody of the Court, he still is under certain legal obligations and restrictions imposed by the court and if he violates any of these restrictions, the court would be at liberty to cancel his bail and remand him to custody during trial of the case. In this sense the court retains a form of control over the accused, even though he/she may not be in physical custody. Thus whether or not an accused facing criminal trial before the court should be allowed to obtain passport so as to enable him to travel abroad, has to be decided by the said court in the given facts and circumstances of the case.
8. As per Clause (4) of Sub Section (2) of Section 6 of the Passports Act, pendency of proceedings in a criminal court against a

person is a ground for refusal of the passport or travel document. However, with a view to obviate the rigor of aforesaid position the Government of India has issued Notification No. G.S.R 570(e) dated 25th August 1993, which mandates that a citizen of India against whom criminal proceedings are pending before a court has to produce order of the said court permitting him to depart from India for the purpose of obtaining a passport. Once such a permission is produced by the said citizen before the Passport Authority, pendency of criminal proceedings would not come in his way of procuring the passport or the travel document.

9. It is in the above context that the petitioner had approached the learned Sessions Judge for issuance of permission/NOC in his favour, but the learned Sessions Judge without considering the plea of the petitioner in this perspective has proceeded to reject his application on a ground which is alien to the controversy at hand. The impugned order passed by the learned Sessions Judge is, therefore, without any legal justification and as such deserves to be set aside.

10. For the foregoing reasons, impugned order passed by the learned Principal Sessions Judge, Budgam is set aside and it is directed

that the learned Sessions Judge shall decide the application of the petitioner for grant of NOC/permission afresh in light of the observations made hereinbefore.

11. Disposed of as above.

12. A copy of this order be sent to the learned Principal Sessions Judge, Budgam.

SRINAGAR
27.12.2024
Aasif



(Sanjay Dhar)
Judge