

Court No. - 15

Case :- APPLICATION U/S 482 No. - 3864 of 2024

Applicant :- Sunil Kumar

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

Counsel for Applicant :- Purnendu Chakravarty, Annuj Taandon

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. Supplementary Affidavit filed by learned counsel for the applicant, by which the copy of the dasti receipts along with email service on respondent no.2 brought on record, is taken on record.
2. Shri Sankalp Mehrotra, Advocate has filed Vakalatnama for respondent no.2, which is taken on record.
3. Heard Shri Purnendu Chakravarty, learned counsel for the applicant, Shri Sankalp Mehrotra, learned counsel for respondent no.2 and learned A.G.A. for the respondent State.
4. The present application has been filed by the applicant **Sunil Kumar** seeking following reliefs:-

"That for the facts and circumstances mentioned in the accompanying Affidavit in support of Application under section 482 Cr.P.C preferred by the Applicant, this Hon'ble Court may kindly be pleased to quash the impugned order dated 19/4/2024 passed by Learned Incharge Civil Judge Junior Division/ Judicial Magistrate Court No. 1 Sitapur in Misc Case No. 254/2020 Criminal Case No. 256/2020 arising out of FIR No. 267/2019 Under Section 498A, 506 IPC and 3/4 DP Act Police Station: Kotwali District: Sitapur and permit the applicant to travel and join his employment in the interest of justice. WHEREFORE, it is respectfully prayed that this Hon'ble Court may kindly be pleased to quash the impugned dated 19/4/2024

passed by Learned Incharge Civil Judge Junior Division/ Judicial Magistrate Court No. 1 Sitapur in Misc Case No. 254/2020 Criminal Case No. 256/2020 arising out of FIR No. 267/2019 Under Section 498A, 506 IPC and 3/4 DP Act Police Station: Kotwali District: Sitapur and permit the applicant to travel and join his employment in the interest of justice."

5. Learned counsel for the applicant submits that earlier he has filed an application for permission to visit Indiana University, Indianapolis School of Medicine Indiana United States (in short hereinafter referred to as 'Indiana University') which has been rejected by the learned trial court and permission has been refused in a matrimonial dispute in spite of the finding and observation given by the trial court regarding good conduct, cooperation and participation of the applicant in its earlier order dated 4.4.2024.

6. Learned counsel for the applicant submits that the bail bonds of the applicant is on record. Father and mother of the applicant have also been enlarged on bail. He is a permanent resident of Bokaro. The address is also on record of the learned trial court. It is not disputed by the parties that sureties of the applicant are also standing in the present case. Charges have already been framed. Now the presence of the applicant will be required only at the time of the evidence under Section 313 Cr.P.C. or at the time of judgment which will take ample time. He needs to visit the Indiana University for urgent research work. Learned trial court has passed the rejection order only on the ground that the applicant has only filed the photocopy of the email and there is no other official communication filed by him.

7. Learned counsel for the applicant submits that while filing the

application the applicant has apprehended regarding the conduct of the respondent.

8. Learned counsel for the applicant has relied on the judgments of **Joydeep Majumdar vs., Bharti Jaiswal Majumdar (Civil Appeal Nos.3786-3787 of 2020); Parvez Noordin Lokhandwalla vs. State of Maharashtra and another reported in (2021) 1 SCC (Cri) 436 and Avneshwar Singh vs. Smt. Monika passed in MAT. APP. (F.C.) 33/2022.**

9. Per contra, Shri Sankalp Mehrotra, learned counsel for respondent no.2 has submitted that in the present application the applicant has shown his present address at Indiana University, however, while filing affidavit dated 27.3.2024 before the learned trial court he has shown his current address at South Korea. It is submitted that the applicant is playing with the court and is not bringing on record his current address.

10. Rebutting to the above submission, learned counsel for the applicant submits that the applicant due to his research work was in South Korea from 2013 to 2022. His current address keeps on changing and that will make no difference as his permanent address is at Bokaro, which is on record with the trial court. He has been enlarged on bail. The sureties is still standing there. His mother and father have also been enlarged on bail. This is a matrimonial dispute and not a heinous crime and neither the applicant is a harden criminal. The presence of the applicant is not needed in the trial at this stage.

11. Perused the record so also the affidavit filed by learned counsel for respondent no.2, which is taken on record.

12. Perusal of the record shows that the applicant is presently employed as a Research Scholar at Indiana University. Presently, the applicant is in India. The applicant was enlarged on bail. There was no restriction upon him to travel abroad, however, an application was submitted by respondent no.2 for impounding the passport which was rejected vide order dated 4.4.2024. While deciding the application conduct of the applicant has been noted by the learned trial court. The relevant part of the order is extracted below:-

"पत्रावली के अवलोकन से विदित होता है कि पत्रावली में दिनांक 27.03.2024 को अभियुक्तगण के विरुद्ध आरोप विरचित किया गया है इसके उपरान्त से पत्रावली अभियोजन के साक्ष्य में नियत है। अभियुक्त सुनील कुमार विदेश में नौकरी करता है तथा वर्तमान में माननीय उच्च न्यायालय आदेशानुसार पत्रावली प्रतिदिन शीघ्र निस्तारण हेतु नियत है तथा अभियुक्त सुनील व्यक्तिगत रूप से उपस्थित आकर पत्रावली के विचारण में सहयोग कर रहा है। ऐसी स्थिति में अभियुक्त सुनील कुमार के पासपोर्ट के जब्ती के बाबत कोई आदेश पारित करना उचित प्रतीत नहीं होता है। अतः मामले के तथ्य व परिस्थितियों को दृष्टिगत वादिनी की ओर से प्रस्तुत प्रार्थना पत्र दिनांक 29.03.2024 न्यायहित में निरस्त किये जाने योग्य है।

आदेश

वादिनी की ओर से प्रस्तुत प्रार्थना पत्र दिनांक 29.03.2024 निरस्त किया जाता है। अभियुक्त सुनील कुमार को आदेशित किया जाता है कि वह दौरान विचारण मुकदमा व्यक्तिगत रूप से उपस्थित आता रहेगा तथा बिना न्यायालय की अनुमति के भारत देश नहीं छोड़ेगा। अन्यथा की स्थिति में अभियुक्त का पासपोर्ट जब्ती हेतु विधिक कार्यवाही अमल में लायी जायेगी। पत्रावली वास्ते साक्ष्य दिनांक 05.04.2024 को पेश हो ।"

13. Perusal of the above extracted order dated 4.4.2024 shows that the learned trial court has appreciated that in compliance of

the order passed by this Court the file is listed on day to day basis for disposal. The applicant is personally present and is cooperating in the trial and on this ground the application filed by respondent no.2 for impounding his passport, was rejected.

14. It has been further provided that without permission of the court the applicant shall not leave the country. After that the applicant has filed an application on 8.4.2024 for going abroad which has been rejected by the learned trial court only on the ground that the applicant has filed the photocopy of the email and no official communication has been filed by him. The relevant part of the order dated 19.4.2024 is extracted below:-

"सुना तथा पत्रावली का अवलोकन किया। पत्रावली के अवलोकन के उपरांत यह स्पष्ट है कि माननीय उच्च न्यायालय इलाहाबाद की लखनऊ खण्डपीठ द्वारा पारित आदेश दिनांकित 01.03.2024 में विचारण न्यायालय से इस विचारण को दिन प्रतिदिन सुने जाने तथा दिनांक 31 दिसंबर 2024 या उससे पूर्व विचारण पूर्ण किया जाना अपेक्षित है। आदेश दिनांकित 01.03.2024 में माननीय उच्च न्यायालय द्वारा स्पष्टतः यह उल्लेख किया गया है कि अभियुक्त की ओर से माननीय उच्च न्यायालय के समक्ष इस आशय का वचन किया गया है कि अभियुक्त दिनांक 28.03.2024 से 30.03.2024 तथा इस विचारण के पूर्ण होने तक भारत में उपस्थित रहेगा इस आधार पर माननीय उच्च न्यायालय द्वारा आदेशित किया गया है कि On the aforesaid undertaking given by the learned counsel on behalf of the applicant and as the learned court concerned is seized with the matter, it goes without saying that on account of any exceptional (where either of the parties approaches the higher court and get the proceeding stayed) in the matter the court concerned may exercise its own robust judicial discretion to lift the aforesaid embargo (with regard to the insistence of the applicant to remain present throughout the trial) for time being, only in aforesaid exceptional

circumstances after recording the reasons for doing so. जिससे यह स्पष्ट है कि अभियुक्त को कोई भी छूट मात्र तब दी जा सकती है जब वह पूर्ण रूप से स्पष्ट नियत के साथ न्यायालय में उपस्थित हो परन्तु इस संबंध में यह दृष्टिगत रखना आवश्यक है अभियुक्त द्वारा पूर्व में वाद लंबित रखने की सम्पूर्ण कोशिश की गयी है। इस संबंध में इससे पूर्व में माननीय उच्च न्यायालय द्वारा आदेश दिनांकित 12.02.2024 के अंतिम प्रस्तर में स्पष्टतः यह कथन किया गया है कि यदि अभियुक्त किसी भी प्रकार से विचारण में असहयोग करता अथवा किसी प्रकार की चाल के माध्यम से न्यायालय की प्रक्रिया का दुरुपयोग करता है तो ऐसी परिस्थिति में न्यायालय को अभियुक्त के प्रति कठोर होना आवश्यक है। उपरोक्त सभी तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए तथा यह तथ्य ध्यान में रखते हुए कि अभियुक्त द्वारा मात्र ई-मेल की फोटोकापी प्रस्तुत की गयी है एवं कोई भी अधिकारिक संचार का विवरण प्रस्तुत नहीं किया गया है। ऐसी परिस्थिति में इसे आपवादिक आधार नहीं माना जा सकता है अतः प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र निरस्त किए जाने योग्य है। आदेश प्रार्थी की ओर से प्रस्तुत प्रार्थना पत्र निरस्त किया जाता है पत्रावली वास्ते अग्रिम कार्यवाही दिनांक 20.04.2024 को पेश हो।"

15. Contention of learned counsel for the applicant regarding the conduct of respondent no.2, appears to carry some force. In paragraph 5 of the application specific pleading has been made by learned counsel for the applicant, which is extracted below:-

"5. That it was not important to find out the IP Address on those communications to reject the application filed by the applicant. The credentials of the applicant is already on record, the conduct of the opposite party is also on record and the Ld. Trial Court ought to have considered the reason for not filing the IP Addresses and should have appreciated that the same would expose the applicant towards malicious and unwarranted communications by Opposite Party or persons in disguise, but definitely, the reputation and carrier prospects of the applicant

would be harmed. As such, the order passed by the Ld. Trial Court has resulted into abuse of process of law and deserves to be quashed."

16. After this application was filed, the orders for dasti summons were issued. The applicant served the dasti summon to respondent no.2 and also sent email and the copy of the petition to her on PDF format. High Court of Delhi in the case of **Avneshwar Singh vs. Smt. Monika passed in MAT. APP. (F.C.) 33/2022** while relying on the judgment of Hon'ble Supreme Court in the case of **Joydeep Majumdar vs. Bharti Jaiswal Majumdar** passed in Civil Appeal Nos.3786-3787 of 2020 has held as under:-

36. Further, it is not in dispute that the respondent-wife had sent various complaints to the Reserve Bank of India against the appellant, which fact she has admitted in her cross-examination by stating that these complaints were made after their separation. Whether the complaints were false or true, irrespective of this fact, making derogatory complaints to the Employer of spouse, with intent to harm professional reputation and financial well-being, is nothing but cruelty. Making such complaints demonstrate lack of mutual respect and goodwill, which is crucial for a healthy marriage and merely by stating that such complaints were made after the parties have separated, in no manner absolves a spouse from the guilt of committing cruelty on the receiving end.

17. Learned counsel for the applicant has submitted that entire copy of the petition, which is filed before this Court, has been sent to the Indiana University to HOD Director and Mr. Carl HR at Indiana University making allegations against the applicant that he is absconding criminal as per the law land in India and non-bailable warrants issued against him are still in operation. Thus, this Court feels that the applicant has rightly not filed the

official communication before the trial court so as to save himself from the unnecessarily communication and cruelty at the hands of respondent no.2.

18. Hon'ble Supreme Court in the case of **Parvez Noordin Lokhandwalla vs. State of Maharashtra and another reported in (2021) 1 SCC (Cri) 436** while considering the justification and right of the citizen, who seeks to travel abroad for a particular purpose, has held that *in Pitam Pradhan v. State of A.P., this Court while granting anticipatory bail, permitted the petitioner to travel abroad noting that his job required him to travel abroad at frequent intervals and may lose his employment if he were not permitted to travel abroad* and concluded in paragraph 25-26 of the judgement which is extracted below:-

"25. Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled

between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel Writ Petition Urgent 2 of 2020 to the US for a period of eight weeks.

26. We accordingly permit the appellant to do so, subject to his furnishing an undertaking to this Court before the date of travel that he will return to India after the expiry of a period of eight weeks and that he shall be available on all dates of hearing before the court of criminal jurisdiction, unless specifically exempted from personal appearance. The undertaking shall be filed in this court before the appellant undertakes travel. On the return of the appellant after eight weeks and if it becomes necessary for him to travel to the US, the appellant shall apply to the concerned court for permission to travel and any such application shall be considered on its own merits by the competent court. The appellant shall travel only upon the grant of permission and subject to the terms imposed. The passport of the appellant shall be handed over to the appellant to facilitate his travel, subject to the condition that he shall deposit it with the investigating officer immediately on his return."

19. From perusal of the record particularly order dated 4.4.2024 it is evident that the applicant has cooperated during trial and he has been present on every date. The charges have already been framed. There is no need of the appearance of the applicant before the trial court till the evidence at the stage of Section 313 Cr.P.C. and at the time of delivery of judgement. There is no condition restraining the applicant in the bail order. The right to

travel for the purpose of livelihood is a fundamental right. Thus, I find no reason to restrain the applicant from traveling abroad. It will not any way affect the trial.

20. Accordingly, the application is **allowed**.

21. The impugned order dated 19/4/2024 passed by Learned Incharge Civil Judge Junior Division/ Judicial Magistrate Court No. 1 Sitapur in Misc Case No. 254/2020 Criminal Case No. 256/2020 arising out of FIR No. 267/2019 Under Section 498A, 506 IPC and 3/4 DP Act Police Station: Kotwali District: Sitapur, is set aside.

22. The applicant is permitted to travel abroad for a period of ten weeks w.e.f. 5.5.2024. In this regard the applicant shall furnish undertaking before the trial court. He shall also furnish undertaking before the trial court that he will return to India after expiry of the period stated above and he shall be available on all the dates of hearing before the trial court unless his presence is exempted. After return of the applicant to India after ten weeks if he again requires to visit abroad for the purpose of research work, he shall be at liberty to move an application before the learned trial court, which shall be considered by the learned trial court on its own merit.

23. Since the dispute between the parties is purely matrimonial in nature and making any complaint by either of the parties will only show immaturity and lack of mutual respect and they will further complicate the matter and therefore it is expected that respondent no.2 in future will not make any unwarranted and unsubstantiated complaints against the applicant to any of the University where the applicant is doing his job.

24. Shri Sankalp Mehrotra, learned counsel for respondent no.2, at this stage, submits that the applicant may be restrained from taking any unnecessary adjournment, to which learned counsel for the applicant has no objection. In this regard no observation is required from this Court as learned trial court has already recorded a finding and observation regarding the conduct of the applicant in its order 4.4.2024.

Order Date :- 30.4.2024
Madhu