

Court No. - 11

Case :- CRIMINAL REVISION No. - 1086 of 2024

Revisionist :- Nooruddin

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

Counsel for Revisionist :- Vikas Singh, Raja Babu Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the revisionist as well as Shri Mahendra Sinha, learned AGA for the State.

2. No notice be issued to the opposite party no. 2 considering the order proposed to be passed.

3. This Court had passed an order dated 5.9.2024 which is reproduced below:

"The case has been taken up on the urgency expressed by learned counsel for the revisionist.

Supplementary affidavit filed today is taken on record.

Heard.

The instant criminal revision has been filed challenging the order dated 08.07.2024 passed by learned Additional Chief Judicial Magistrate I, Room No. 1, Unnao whereby the application for permission to travel abroad for higher study of the revisionist has been rejected.

The case arises out of an FIR vide Case Crime No. 114 of 2021 under Sections 147, 504, 506, 336 I.P.C. Police Station Bangarmau, District Unnao.

Learned trial court has rejected the application filed by the revisionist for going abroad to Russia for MBBS studies on the ground that as the charges are to be framed consequently permitting the applicant will cause delay in disposal of the proceedings.

The urgency being expressed by learned counsel for the revisionist is that as the revisionist has secured admission in Samara State Medical University 1, Russia for MBBS which is a six year course including one year of internship and as the offences for which the revisionist has been accused carry sentence of upto two years consequently not permitting the revisionist to go abroad for studies would result in his career being jeopardized although it has been stated that whenever the appearance of the revisionist would be needed he would present himself before learned trial court.

Considering the aforesaid, let learned A.G.A. verify the admission of the revisionist either electronically or otherwise by tomorrow.

List this case on 02:15 PM tomorrow i.e. on 06.09.2024."

4. From perusal of the aforesaid order it emerges that the revisionist has been

admitted to an MBBS programme in Russia for a six years' course including one year of internship. A criminal case under Section 147, 504, 506, 336 IPC is pending against him. The revisionist wants to go to Russia for pursuing his MBBS course. In this regard, he filed an application before the learned trial court for proceeding to pursue his educational course, which application has been rejected by the learned trial court vide order dated 8.7.2024, copy of which is annexure-1 to the revision, on the ground that as the revisionist is an accused and the charges are yet to be framed, permitting the application will cause delay in disposal of the proceedings.

5. On 05.09.2024, this Court has directed the learned AGA to verify the admission of the revisionist either electronically or otherwise.

6. Shri Sinha, learned AGA has produced a report dated 6.9.2024 which is taken on record.

7. As per the said report, it has been indicated that the learned AGA has telephonically verified the fact that the revisionist had applied through Study Palace Hub Pvt. Ltd being its Head Office at Delhi from where the information received is that the revisionist has been selected in Samara State Medical University, Russia and his credentials have been found to be correct. However, neither the fees nor the passport of the revisionist has still been deposited.

8. Learned AGA has passed on the police report dated 6.9.2024 pertaining to the criminal cases which are pending against the revisionist's father namely, Shri Fahim @ Fahimuddin which is also taken on record.

9. Learned counsel for the revisionist has placed reliance on a judgement of the High Court of Jammu & Kashmir and Ladakh at Jammu in Criminal Revision No. 11 of 2021 **in re: Jivitesh Syal vs. UT of Jammu and Kashmir, decided on 03.09.2021** and argues that the offences against the revisionist as accused carry a maximum punishment of two years which is also admitted by the learned AGA. Consequently, mere pendency of the said criminal trial in which the charges have still not been framed may not jeopardize the bright career of the

revisionist, more particularly, when he has already secured admission in the MBBS course.

10. Learned counsel for the revisionist also indicates that in para no. 24 of the affidavit accompanying the application for interim relief, it has specifically been stated that the revisionist is willing to appear before the learned trial court. He also wants to cooperate in the trial. Further, in para no. 30 of the affidavit, it has been indicated that the revisionist is also ready to ensure security before the learned trial court to the satisfaction of the court.

11. I have heard learned counsel for the parties and perused the record.

12. From perusal of the record, it emerges that the revisionist has secured admission in the six years' MBBS course in Samara State Medical University at Russia. He is an accused in a Criminal Case No. 327 of 2022 in re: State vs. Fahimuddin and Ors which is pending before the learned Chief Judicial Magistrate, Unnao arising out of FIR No. 114 of 2021, under Sections 147, 504, 506, 336 IPC. Admittedly, the maximum sentence which can be imposed upon the revisionist, in case the charges are proved, is two years.

13. Securing of admission in MBBS itself indicates that the revisionist is a bright student and in case he is not permitted to travel abroad for pursuing his MBBS course, the same would jeopardize his chance of receiving education.

14. An identical issue has been considered by the High Court of Jammu & Kashmir and Ladakh in the case of **Jivitesh Syal (supra)**, wherein the court has observed as under:

"4 Learned counsel for the petitioner submits that the petitioner is a young boy, aged about 20 years who passed his class 12th examination in the year 2020 securing 86% marks. It is submitted that the petitioner, who intended to pursue his studies abroad, had applied to various outside Universities. He claims to have received offer letter from the University of York, London. It is further submitted that in order to go abroad for studies, it is necessary to take permission of the Court as the petitioner is involved in the criminal case and for this purpose, the petitioner approached the learned Magistrate seeking such permission. However, the permission was declined by the learned Magistrate. Learned counsel would submit that the police till date despite passage of considerable period has not filed charge sheet in the matter. Learned counsel also submits that the petitioner is ready to give an

undertaking to the effect that he will cooperate with the investigation and will appear before the Police or the Court as and when required. In case, such permission is not granted, the petitioner will be put to irreparable loss."

5 Heard learned counsel for the petitioner and perused the record.

6. Admittedly, in the instant case, charge sheet has not been filed so far and there is likelihood that the trial of the case would take some time even to start. It is pertinent to mention here that in the present case, charas weighing 60/70 gms is allegedly recovered from the possession of the petitioner/accused which, undoubtedly, falls within the definition of 'small quantity' and that way charge against the petitioner cannot be said to be that serious as would justify putting fetters on his right to pursue higher studies abroad.

7 In *Muhammed Abdul Salam v. The State of Kerala*, (Crl.MC. No. 5249 of 2014), the Kerala High Court, while considering similar question, has held as under:-

"I find that the request of the petitioner to release his passport will have to be properly and judiciously considered by the trial court. In view of the order of this Court in Crl. M.C. No. 1862/2014 permitting the other accused to go abroad, the question of releasing the petitioner's passport can be considered by the trial court, and if it is found that his request is genuine that he is really employed abroad, or that he wants to go abroad can be granted by the trial court. Only the trial court knows how much time will be taken to complete the trial, or whether his physical presence is actually required throughout. Any way, passport can well be released on making reasonable security deposit, and permission to go abroad will have to be granted by the trial court on a consideration of all the circumstances including the time which will be taken for conclusion of trial."

8. In the case of *Mustaffa K. and Others v. State of Kerala*, Crl. M.C. No. 394 of 2014, the High Court of Kerala has held as under:-

"2. The petitioners surrendered their passports and complied with all the conditions imposed. Petitioners Visa Criminal Revision No.:

68/2017 Rakesh Kumar v. State Page no. 8/14 expired on 23.12.2013, 0401.2014 and 19.12.2013 respectively. It is submitted that, if they are not permitted to travel abroad immediately, and allowed them to renew the Visa, they will lose the job and the same will cause irreparable injury and hardship to the petitioners. The petitioners filed C.M.P. No. 3875 of 2013 before the Chief Judicial Magistrate Court, Thalassery seeking permission to travel abroad and allowing them to renew the Visa. Vide order dated 10.12.2013, copy marked as Annexure-B, the court below rejected the permission to travel abroad. For the reasons stated by the petitioners it is become just and necessary to release the passport so that the petitioners can travel abroad and continue his job there. Crl.M.C. is allowed. Annexure-B order is quashed. The petitioners are permitted to go abroad. There will be a direction to the learned Magistrate to release the Crl.M.C. No. 394 of 2014 passport to the petitioners for the purpose of stamping Visa and for travel abroad subject to such conditions imposed by the Chief Judicial Magistrate. Accordingly, the condition No. 5 in the bail order is deleted."

9. The Bombay High Court has also, in [*Jitsingh Kalirai, Asstt Collr Of C Ex v. Kulbir Singh*](#)

Ahuja, 1989 Law Suit (Bom) laid down that the accused may be permitted to leave the jurisdiction of the court, may be outside India depending upon the facts and circumstances of each case.

10. It is true that the legal position on the point cannot be put in a strait jacket and would dependent on case to case basis. Having regard to the facts and circumstances of this case, I am of the considered opinion that the petitioner cannot be denied the right to go abroad to pursue studies only on the ground that he is involved in a criminal case. Looking to the gravity of charge and the young age of the petitioner and his quest to acquire quality education, the request made appears to be genuine.

11. In the present case, the petitioner is ready to give an undertaking that he would come back as and when required by the Police for the purpose of investigation or when his appearance is required by the learned Magistrate for the purpose of the trial. In case the petitioner is not permitted to travel abroad to pursue his studies, the same will cause irreparable loss to him. However, such permission to the petitioner in connection with his studies shall be subject to certain conditions.

12 In view of the above, the present revision petition is allowed and the order impugned is set aside. Subject to the petitioner depositing a security of Rupees one lac with the 1st Additional Munsiff (Forest) Judicial Magistrate 1st Class, Jammu, he is permitted to travel to London to pursue his studies and the contrary condition in the bail order is waived. In this regard, the petitioner shall file an undertaking before the 1st Additional Munsiff (Forest) Judicial Magistrate 1st Class, Jammu, giving detail of the place where he is going to travel for his studies and his contact number and contact address in order to enable the police or the Court to contact him as and when required. The petitioner shall also state in the affidavit that he will be available for investigation, if any, or for trial as and when required by the police or the Court. He shall also nominate his lawyer to appear and receive processes on his behalf from the police and the Court. It is made clear that in case the petitioner makes any default without reasonable excuse, the police or the trial Court as may be shall be free to enforce his presence through coercive means. The said affidavit which shall be filed before the 1st Additional Munsiff (Forest) Judicial Magistrate 1st Class, Jammu would be forwarded along with security amount to the Court concerned where the challan of this case is filed."

15. The High Court of Jammu & Kashmir and Ladakh while delivering the aforesaid judgement, has also placed reliance on the judgements of the High Court of Kerala in the case of **Mustaffa K. and others vs. State of Kerala in Criminal M.C. No. 394 of 2024** and **Muhammed Abdul Salam vs. The State of Kerala in Criminal M.C. No. 5249 of 2014**, wherein also the same question was involved.

16. The High Court of Jammu & Kashmir and Ladakh after considering the aforesaid judgements of the Kerala High Court and considering the trivial nature of offence which was involved in the said case, was of the view that the charges against the accused cannot be said to be that serious as would justify putting fetters on his right to pursue his higher studies abroad.

17. In the instant case also, the offences of the revisionist as accused are trivial

offences which would carry only a maximum period of sentence of two years if proved. As already observed above, the revisionist is a young and bright student having secured admission in MBBS, a much coveted field. There are lakhs of aspirants every year considering the number of persons who apply for NEET UG which is approximately 23 lakhs so far as the NEET UG 2024 examination is concerned. This itself reflects the rush for securing admission in MBBS course. Once the revisionist has in fact managed to secure admission in the MBBS course there does not appear to be any justicable or justifiable reason as to why he may be permitted to travel abroad considering the trivial nature of offences alleged against the revisionist.

18. So far as the list of cases pending against the revisionist's father is concerned, the same have got nothing to do with the case against the revisionist.

19. This Court is of the view that the application of the revisionist to travel abroad to acquire a MBBS degree cannot be declined and appears to be genuine.

20. Keeping in view the aforesaid decision, the revision is **allowed**. The order impugned dated 8.7.2024, copy of which is part of the revision, is set aside.

21. The revisionist is permitted to travel to Russia to pursue his MBBS course at Samara State Medical University at Russia, subject to his fulfilling the other conditions with regard to having a proper visa and passport in this regard.

22. The revisionist shall file an appropriate application before the learned trial court for giving security along with certified copy of this order. The learned trial court shall proceed to pass an order upon the same expeditiously, say, within a week on the date of filing of the said application, subject to his depositing the security to the satisfaction of the learned trial court.

23. The application filed before the learned trial court would also indicate the details of the place where the revisionist is going to travel for his studies, his contact number and the address in order to enable the police or the court to contact him as and when required. The revisionist shall also state in affidavit that he will be available for investigation, if any, or for trial as and when

required by the police of the Court. He shall nominate his advocate to appear and receive processes on his behalf from the police and the court.

24. It is made clear that in case the revisionist makes any default without reasonable excuse, the police or the trial court shall be free to enforce his presence.

25. Let a copy of this order be provided to the counsel for the revisionist within twenty four hours on payment of usual charges.

Order Date :- 6.9.2024
Shravan