

24.08.2022
Item No.10.
Mithun
Ct.42

IA No: CRAN/3/2022, CRAN/4/2022
In
CRR 1929 of 2021

Dr. Navanil Ghosh
Vs.
State of West Bengal & Ors.

Mr.Bikash Ranjan Bhattacharjee, Sr.Adv
Mr. Jamiruddin Khan, Adv.
...for the petitioner.

Mr. S.G.Mukherji, Ld.P.P.
Mr. Md. Kutubuddin, Adv.
...for the State.

The petitioner has prayed for appropriate order directing the Passport Authority to issue the passport in favour of the petitioner on the basis of his application dated 18th April, 2022 forthwith on the grounds stated therein.

I have heard Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel on behalf of the petitioner and Mr. Saswata Gopal Mukherjee, learned Public Prosecutor.

Needless to mention that ACGR 5255 of 2019 is pending against the petitioner with an allegation of committing offence under Section 354 of the Indian Penal Code before the learned Judicial Magistrate, 3rd Court at Alipore.

The aforesaid case arose on the basis of a written complaint submitted by the opposite party No.2 alleging, *inter alia*, that on 30th October, 2019, the petitioner outraged modesty of the de-facto complainant.

It is submitted by Mr. Bhattacharya that the petitioner is a qualified Medical Practitioner. He has got a chance for further studies in U.S.A. and in order to pursue his studies, he wants to go to U.S.A. However, the Passport Authority has declined to issue passport in favour of the petitioner on the ground that a criminal case is pending against him.

Mr. Bhattacharya, learned Senior Counsel on behalf of the petitioner draws my attention to Ministry of External Affairs, PSP Division, Office Memorandum dated 10th October, 2019 which states that the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a Criminal Court in India and who produce orders from the Court concerned

permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-Section (2) of Section 6 of the said Act, subject to certain conditions mentioned in Clause (a) to (d) of Paragraph 2 of the said office memorandum.

It is also submitted by Mr. Bhattacharya that since a criminal case being ACGR 5255 of 2019 is pending against the petitioner, the Passport Authority has refused to issue passport in favour of him. Therefore, this Court may pass an appropriate order so that passport may be issued in favour of the petitioner.

The learned Public Prosecutor, on the other hand, submits that the Passport Division is under the control of the Ministry of External Affairs, Government of India. Therefore, the petitioner ought to have made Union of India, an opposite party. The State has nothing to do with the instant petition.

Having heard the learned Counsel for the parties and on perusal of the office memorandum dated 10th October, 2019 issued by the Ministry of External Affairs, Government of India, PSP Division, it is found that the Passport Authority

may issue passport to an Indian Citizen against whom the criminal proceeding is pending provided he produces appropriate order from the Court concerned permitting him to depart from India.

The word 'Court concerned' in my considered view, is the Court where ACGR 5255 of 2019 is pending. No criminal proceeding is pending before this Court. A criminal revision cannot be treated as a continuation of criminal proceeding against the petitioner. Therefore, this Court cannot grant any permission in favour of the petitioner directing the Passport Authority to issue passport against the petitioner.

Accordingly, the instant application being devoid of any merit is rejected.

However, this Court makes it clear that rejection of the instant application will not prevent the petitioner to prefer similar application before the Trial Court. If such application is filed, the Trial Court shall dispose of the application in accordance with law and on the basis of the aforesaid office memorandum dated 10th October, 2019, taking into consideration the fact that petitioner's further studies in the field of

medicines in U.S.A. may not be hampered due to the pendency of the criminal case being ACGR 5255 of 2019.

Parties are at liberty to act on the server copy of this order.

CRAN 4 of 2022 is accordingly **disposed of.**

(Bibek Chaudhuri, J.)