

4th December,
2023
(AK)
05

W.P.A. 24654 of 2023

Khalek Molya
Vs.
Union of India and others

Mr. Arun Kr. Halder
Mr. Saikat Chatterjee
...for the petitioner.

Mr. Ashok Kumr Chakraborty
Mr. Kumar Jyoti Tewari
...for the respondents.

1. Learned counsel for the petitioner submits that the petitioner wants to go for *Haj*.
2. The process for the same has already started and is due to expire, apparently by December 7, 2023.
3. It is submitted that although a criminal case is pending against the petitioner, the petitioner has been enlarged on bail and the charge sheet in connection therewith has already been submitted.
4. Learned counsel places reliance on a Notification dated August 25, 1993, issued by the Ministry of External Affairs, Government of India, coupled with the ratio laid down in an unreported judgment of a coordinate Bench in the case of *Arabul Islam and others vs. Union of India and others*, to argue that the petitioner, under circumstances as indicated in the notification, is entitled to leave for *Haj*.
5. Learned Additional Solicitor General submits that even apart from Section 6 (2) (f) of the Passport Act,

Section 438(2) of the Code of Criminal Procedure makes it mandatory for the petitioner and similarly placed accused persons to obtain an order from the jurisdictional court where the trial is going on regarding the criminal case.

6. Even the notification, it is argued, makes such permission mandatory.

7. A perusal of the judgment of the coordinate Bench cited by learned counsel for the petitioner indicates that the learned Single Judge was considering a similar issue.

8. While doing so, the Notification dated August 25, 1993 was discussed and it was recorded that the same was referred to by the Passport Officer and it made it clear that the Central Government decided to exempt citizens against whom proceedings are pending from travel restrictions in public interest.

9. Although the Notification was elaborately dealt with, it is not clear from the said order whether the petitioner therein had actually obtained an order from the concerned criminal court where the trial was going on.

10. The issue which has cropped up in the present case as to whether a person can take resort to the Notification without approaching the jurisdictional court at all was also not dealt with therein.

11. Hence, I cannot convince myself that anything contrary to the Notification was laid down in the cited judgment.

12. The Notification clearly stipulates that in exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 and in supersession of the earlier notification of April 14, 1976, the Central Government being of the opinion that it is necessary in public interest to do so, thereby exempted 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 the 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 the conditions as stipulated therein.

13. The conditions pertain primarily to the period for which such persons should be permitted to go abroad.

14. The plinth of the said riders is that if a particular period is specified in the order of the court, the passport has to be issued for such period and if not, by default a period of one year usually is the period for which such passport is issued.

15. Nothing in the said notification, however, dilutes the preliminary requirement of the petitioner to approach the “court concerned” for an order permitting him to depart from India as a pre-requisite of the grant of passport.

16. Since the petitioner has not done so in the present case, it is mandatory for the petitioner to first approach such court for an order.

17. Only subsequent to such order can passport authorities comply with the Notification cited by the petitioner.

18. In such view of the matter, keeping in view the fact that the petitioner might miss his opportunity to go to *Haj* this year altogether, an extreme case of urgency has been made out.

19. WPA 24654 of 2023 is, thus, disposed of by granting liberty to the petitioner to approach the jurisdictional court where the criminal trial of the petitioner is now going on to obtain leave in terms of Section 6(2)(f) of the Passports Act read with the Notification dated August 25, 1993.

20. If such application is made by December 4, 2023, the trial court shall positively decide the same with utmost expedition, latest by December 5, 2023 and pass orders thereupon.

21. The petitioner is, for such purpose, granted leave to communicate the gist of this order to the jurisdictional court to ensure compliance.

22. Upon such order being passed, if a leave is granted to the petitioner permitting him to depart from India in the same, the petitioner shall accordingly move the passport authorities who will process the application of

the petitioner with utmost urgency keeping in view the outer limit of the *Haj* travel and decide the same latest by 48 hours from presentation of such application.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)