

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1395 OF 2023
IN
CRIMINAL APPEAL NO.289 OF 2017**

Shaikh Ryiaz Shaikh Gani,
Age-66 years, Occu:Agriculture,
R/o-At Post-Sevali,
Taluka and District-Jalna.

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Partur Police Station, Partur,
Taluka-Partur, District-Jalna.

...RESPONDENT

...
Ms. Almas Abdul Quader Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 1st SEPTEMBER, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the applicant for permitting him to perform his religious duty by permitting him to go abroad, for which he needs a passport.

2. The applicant is the original accused No.15, who has filed Criminal Appeal No.289 of 2017 and it is pending. Applicant / appellant has challenged his conviction, which is for the lesser offence. Applicant wants to go for religious pilgrim (*Haj* or *Umrah*). In order to make an application for passport, applicant requires permission of this Court. As per Government Resolution No. VI/401/1/5/2019, issued by Government of India, dated 10th October 2019, the permission can be granted while criminal case is pending and therefore, on the terms and conditions that may be imposed, it is prayed that the applicant be allowed to get the passport and be permitted to go abroad.

3. Heard learned Advocate Ms. Almas Abdul Quader appearing for the applicant and learned APP Mr. Phule appearing for the State.

4. Learned APP submits that no other case is pending against the present applicant, however, he has been convicted by the trial Court and his Appeal is pending. Possibility of fleeing, therefore, cannot be ruled out.

5. It is to be noted that the present applicant / appellant, who is original accused No.15, faced the trial i.e. Sessions Case No. 149 of 2008 along with many other accused persons. As regards the present appellant is concerned, he has been convicted for the offence punishable under Sections 143, 145, 147, 148 read with Section 149 of the Indian Penal Code and the maximum sentence that has been awarded is one year and fine has been imposed. It appears that the appellant has paid the fine amount. His Appeal has been admitted by this Court on 4th July 2017 and by order passed in Criminal Application No.3255 of 2017 on the same date, appellant has been released on bail.

6. We have gone through the Office Memorandum issued by the Government of India on 10th October 2019. Definitely, this Court can permit the applicant to possess or apply for passport. Now the applicant says that he wants to go abroad for religious pilgrim i.e. *Haj* or *Umrah*. Applicant is aged 66 years. The Constitution of India allows every citizen of India to profess the religion of his choice and therefore, permission need not be sought in respect of performing religious duty. It is only the question to get the passport. However, at this stage, we would say that after the passport is received by the applicant, he

should again seek permission from this Court to go abroad by giving schedule of his departure and arrival. At that time suitable conditions can be imposed. Under these circumstances the Application deserves to be partly allowed.

7. The Application stands partly allowed. This Court is permitting the applicant – Shaikh Ryiaz Shaikh Gani to get the passport or apply for the passport, for which there cannot be an objection. However, condition is imposed that after the passport is issued to the applicant, he should again approach this Court for seeking permission to go abroad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE