

28-11-2024
Item No.3
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

WPA No.25175 of 2024
Nausheen Wasim

-vs-

The State of West Bengal & Ors.

Mr. Md. Sarwar Jahan
Mr. Binay Shaw
Ms. Tapati Sarkar
Mr. Asit Mehdi ...for the petitioner

Mr. Nilanjan Bhattacharjee
Mr. Sachit Talukdar ...for Union of India

Mr. Amitesh Banerjee, sr. standing counsel
Mr. Akash Dutta ...for the State

1. The petitioner holds an Indian passport and she intends to visit USA for meeting her fiancée, but the visa has not been issued to her as a criminal case is pending against her. The police report filed by the Officer in Charge of Beniapukur police station mentions that in connection with Beniapukur PS Case No.36 dated January 19, 2023 under sections 323/324/ 506/509/114/379 IPC, Beniapukur PS Charge Sheet No.77 of 2023 has been filed wherein the petitioner is shown to be one of the accused persons. At the time of filing charge-sheet charge under section 379 IPC was dropped.
2. The petitioner approached the learned Magistrate for obtaining 'no objection'. The learned ACJM, Sealdah in its order dated July 9, 2024 records that apart from the subject case, there is no other case pending against the petitioner under the

- jurisdiction of Kolkata Police. The petition filed by the petitioner was considered and allowed with the consent of the learned prosecution.
3. After the order was passed by the learned Magistrate, the petitioner made a further application for obtaining visa, but as the police verification report was not clear, the application remained pending for review at the regional passport office.
 4. Learned advocate representing the petitioner submits that the petitioner intends to go abroad and undertakes to come back within a period of two months thereof. It has been argued that the right of an Indian citizen to travel abroad ought not to be curtailed in view of pendency of the criminal proceeding against him/her.
 5. Reliance has been placed on the judgement in the case **Rahul Saraff v. Union of India & Ors.** reported in **(2024) (Supreme) (Cal) 921** wherein the court was considering the issue as to whether pendency of a criminal proceeding will be a bar for an applicant to travel abroad. The court observed that the purpose of the passport is only to regulate travel and not to bar travel altogether. A person can, after the purpose for travelling abroad is over, return to the country. It is not necessarily that a person for jumping bail or to avoid the criminal proceeding would require a passport to flee abroad.
 6. The primary object to restrict foreign travel of an accused person against whom criminal proceeding is pending is to ensure that the criminal proceeding is not held up and, in the event, the said accused is ultimately convicted, then he can undergo the punishment. It is basically to ensure

that the criminal proceeding is not frustrated. As long as the requirement to restrict travel does not achieve the desired result, there is no point in restricting travel altogether.

7. The petitioner prays for a direction upon the passport authority to give her clearance for travelling abroad.
8. Learned advocate representing the Union of India opposes the prayer of the petitioner. Provision of sections 6 and 10 of the Passports Act, 1967 has been relied upon. It permits refusal to issue passport or to impound the same, if already issued, if any proceedings in respect of an offence is alleged to have been committed by the applicant is pending before any criminal court in India.
9. It has also been submitted that as the petitioner is arraigned as an accused in a criminal case, therefore, the authority rightly refused to issue police clearance certificate in favour of the petitioner.
10. Learned advocate representing the State relies upon the report filed by the Officer in Charge of Beniapukur police station disclosing the pendency of a criminal case against the petitioner.
11. I have heard the respective submissions made on behalf of the parties.
12. It is an admitted fact that a criminal case is pending against the petitioner. The court in the matter of **Rahul Saraff** (supra) was left wondering as to whether pendency of the criminal proceeding should act as a complete bar for an applicant to travel abroad.
13. According to the Passports Act, the passport authority shall refuse to make endorsement for visiting any foreign country or may refuse to issue

passport or travel document for visiting any foreign country, if any criminal proceeding is pending against the applicant before a criminal court in India. The court in the matter of **Rahul Saraff** (supra) observed that there may be various reasons for the criminal proceeding to be pending in the courts of India.

14. The object to restrict travel is to ensure that the said criminal proceeding is not held up for want of the accused person. The presence of an accused person may be required at the time of trial. As the courts in India are yet to adhere to a specific time-limit for conclusion of trial of a criminal proceeding, hence, the restriction to travel abroad ought not to be followed so rigidly so as to prevent travelling abroad altogether.
15. There are innumerable instances where false and frivolous complaints are lodged before the police out of enmity between the parties. The police register a case in response thereto and the said criminal case remains pending in the court for months together only to be dismissed years later. But in the interregnum valuable time is lost and precious opportunities missed. It may be that the complaint was lodged out of grudge and mala fide intention to prevent the accused to travel abroad or to secure a respectable job for which police clearance is required. If only for the pendency of the criminal case the prayer of the applicant is turned down, then the same will be absolutely unfair and improper.
16. Moreover, there is no mechanism to prevent a citizen from lodging false complaints before the police. The genuineness of the allegations made in the complaint can be proved only on conclusion of

the trial. The criminal courts are flooded with cases arising out of bogus complaints. The cardinal principle of criminal jurisprudence is that a person has to be taken as innocent till proved guilty in a court of law. Refusing or rejecting any prayer of an applicant on the grounds that a criminal case is pending against him, depriving him to avail the opportunity which he could have availed had the criminal case not been pending against him, amounts to a form of punishment. An applicant cannot be punished only because a criminal case is pending against him/her. The authority ought to take a pragmatic approach and strike a balance to achieve the object of the Act.

17. A person accused in a criminal case in India can freely travel inside the country. The restriction for foreign travel is primarily to check fleeing of the accused person and not returning back to the country any further. If the applicant can assure and undertake that he will cooperate in the trial of the criminal case and make himself available as and when required by the criminal court, then there is no reason as to why permission to travel abroad cannot be given. If there is a genuine reason for the applicant to abscond, then certainly the prayer can be refused.
18. In the instant case the petitioner has given an undertaking before the Magistrate to make herself available whenever the court requires her presence.
19. It has been brought to notice of the court that charge is yet to be framed and notice is yet to be issued upon all the accused persons. The same implies that it will take a considerable period of time for the trial to commence.

20. Considering the fact that the criminal trial may take some time for final disposal, the passport authority can consider the prayer of the petitioner for issuing the police clearance certificate so that she may travel abroad. The passport authority may also seek for a specific undertaking from the petitioner disclosing the time-period of her overseas travel.
21. The passport authority can, accordingly, find a window where the petitioner may be permitted to travel abroad with the undertaking that she will return within a specified date.
22. Hence, the instant writ petition is disposed of by directing the seventh respondent – the Regional Passport Officer – to consider issuance of the police clearance certificate in favour of the petitioner in light of the observations made hereinabove. A decision shall be taken in the matter at the earliest but positively within a period of four weeks from the date of communication of this order.
23. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
24. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

