



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3467 OF 2024
IN
CRIMINAL APPEAL NO. 267 OF 2016

Shaikh Dagadu Shaikh Amir Manyar
Age 67 years, Occupation : Nil,
R/o : Dev Madhi Galli, Pimpalkothe [Bk],
Tq. Erandol, District : Jalgaon.

... Applicant
[Orig. Accused No.2]

Versus

1. The State of Maharashtra
2. The Union of India,
Regional Passport Officer, Mumbai,
Through Ministry of External Affairs. ... Respondents

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Mr. Joydeep Chatterji, Advocate for the Applicant.
Mr. N. B. Patil, APP for Respondent No.1-State.
Mrs. Sudha Subhashrao Kulthe-Chintamani, Standing Counsel for
Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.09.2024

Pronounced on : 15.10.2024

ORDER :

1. Convict for offence under Section 12 of the Prevention of Corruption Act, 1988 [PC Act], and who has filed appeal against conviction, has put up instant application praying as under :

“[C].The Respondent No.2 may kindly be directed to issue a passport to the applicant as per the applicable rules laid down in the Notification dated 25.08.1993, GSR 570[E] issued by the Ministry of External Affairs.”

2. Learned counsel for the applicant-appellant submitted that applicant was tried by Additional Sessions Judge, Jalgaon vide Special (A.C.B.) Case No. 6 of 2015 on charge of commission of offence u/s 12 of the PC Act. That, trial culminated into conviction dated 28.03.2016. He further submitted that exception has been taken to said judgment of conviction by filing appeal before this Court which is numbered as Criminal Appeal No. 267 of 2016 and in the said appeal, instant application has been pressed into service.

3. Learned counsel further pointed out that, wife of applicant-appellant is desirous of undertaking Haj pilgrimage in June 2025. He emphasized that as per Islamic customs, married lady should necessarily accompany her husband to take care of her and as such, applicant being husband, is required to accompany her to Saudi Arabia. It is pointed out that, because of above conviction and appeal being pending, passport authorities are not entertaining his application for issuing passport i.e. due to pendency of criminal appeal.

4. He further pointed out that by virtue of notification dated 25.08.1993, Ministry of External Affairs has directed that permission to procure passport can be granted under Section 22(a) of the Passports Act, 1967, subject to permission obtained from court before whom case is pending. Therefore, learned counsel submits that instant application has been filed to apply for passport. That, applicant being husband, has to accompany his wife for the said pious pilgrimage, and submission of forms for the same would commence in November 2024. Hence the above prayers.

5. Learned counsel for the Union of India orally submitted that appropriate order be passed.

6. After hearing both sides, and on pondering over the prayers, if notification relied is taken into consideration, it is noticed that Ministry of External Affairs has issued Notification, clause (a) of which is as under :

“G.S.R. 570(E).- In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated 14th April, 1976 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 the following conditions, namely :-

(a) The passport to be issued to every such citizen shall be issued -

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii)

(iv)

7. On affidavit, it has been affirmed that applicant being husband, as per customs, should accompany married lady for the said pilgrimage. Admittedly, conviction of appellant under PC Act is of the year 2016. Currently, this court is dealing with appeals of year 2005-2006. therefore, there is no reason to refuse relief, more particularly in view of the above reproduced provision. However, it needs to be clarified that permission only to apply for passport is considered at

this stage. Applicant, after receipt of passport, before leaving the country for pilgrimage with his wife, should prefer another distinct application putting up prayers to leave the country by quoting the itinerary of the proposed pilgrimage, duration and stay at Saudi Arabia. Only upon separate application to that extent, further prayers for leaving the country would be considered. In view of the above, following order is passed:

ORDER

- [i] The application is allowed in terms of prayer clause [C].
- [ii] Applicant, after receipt of passport, before leaving the country for pilgrimage with his wife, should prefer another distinct application putting up prayers to leave the country by quoting the itinerary of the proposed pilgrimage, duration and stay at Saudi Arabia.
- [iii] The application is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]