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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 01.02.2024
Pronounced on: 05.02.2024

+ **CRL.A. 607/2011**

ASHUTOSH SHARMA Appellant

Through: Mr. Anshul Sharma & Mr.
Rohan Panwar, Advocates.

versus

STATE THR. CBI Respondent

Through: Mr. Mridul Jain, SPP for CBI.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 9690/2023

1. By the way of present application file under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the appellant/applicant seeks permission for renewal of his passport.

2. The appellant herein i.e. Ashutosh Sharma had preferred the above-captioned appeal against the judgment dated 21.04.2011 and order on sentence dated 23.4.2011, passed by the Court of Special Judge, CBI, Karkardooma, Delhi whereby the learned Trial Court had convicted the appellant and had sentenced him to undergo four years of rigorous imprisonment with fine of Rs. 10,000/- under Section 7 of Prevention of Corruption Act, 1988 ('PC Act'), and four



years of rigorous imprisonment with fine of Rs. 10,000/- under Sections 13 (2) read with Section 13(1)(d) of PC Act.

3. The appeal was admitted *vide* order dated 18.05.2011 by this Court and the sentence of the appellant was suspended *vide* order dated 02.06.2011

4. Learned counsel for the applicant/appellant submits that the appellant was issued a passport bearing number K3316035 on 08.02.1996 which was valid up to 07.02.2006 and it had got expired during the pendency of proceedings before the learned Trial Court. It is further submitted that thereafter, an application had been preferred before the Trial Court for renewal of his passport which was disposed of *vide* order dated 29.09.2008. It is stated that after the said order, the appellant had applied for renewal of his passport which was later issued to him on 21.02.2012 and was valid up to 20.02.2022. It is argued that during the pendency of the present appeal, the passport of the appellant has expired and he wishes to get his passport renewed, and as per the procedure of passport office, in case of pending criminal proceedings, permission needs to be taken from the concerned Court before making application for renewal of passport. It is stated that the applicant has already been granted bail by this Court without any conditions and he does not pose any flight risk as he is a permanent resident of Delhi and he further undertakes to remain present before this Court as and when directed to do so. Therefore, it is played that the present application be allowed.

5. Learned counsel appearing on behalf of CBI submits that the grounds raised in the present petition are devoid of any merit and



there is no reasonable ground to allow the appellant to get his passport renewed, till his appeal against conviction is pending before this Court. Therefore, it is played that the present application be dismissed.

6. The arguments addressed before this Court have been heard and considered and the material on record has been perused.

7. The grounds for refusal of passport are contained under Section 6(2) of the Passports Act, 1967, which is reproduced as under:

"6. Refusal of passports, travel documents, etc.-

XXXX XXXX XXXX XXXX

(2) subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) ***
- (b) ***
- (c) ***
- (d) ***

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have committed by the applicant are pending before a criminal court in India;"

8. A perusal of aforementioned provision reveals that the passport authority can refuse to issue passport, *inter alia*, on the following two grounds:



(a) If the applicant has been found guilty of any morally reprehensible offence by an Indian court and sentenced to imprisonment for a period of at least two years, within the last five years prior to the date of application.

(b) If there are criminal proceedings pending against the applicant in an Indian court for any offence.

9. This Court, in case of *Sabir v. State (NCT of Delhi)* 2023 SCC OnLine Del 4116, had examined the law of Section 6(e)(f) of Passports Act and had observed as under:

“11. A perusal of this notification reveals its circumscribed ambit, which pertains exclusively to the exemption of individuals from the operation of Clause (f) of Section 6(2) of the Passports Act. The said notification lucidly elucidates its sole purpose of granting exemption to citizens who are the subject of pending criminal proceedings. As per the said notification, the Courts before whom the criminal proceedings are pending are empowered to grant permission to travel abroad, subject to certain conditions.

12. During the course of arguments, learned counsel for the appellant had argued that a period of 5 years post conviction, as mentioned under clause (e) of Section 6(2) of Passports Act had elapsed, and no permission of this Court was required for issuance of passport. Having thoughtfully examined the provisions of the Act and relevant notification, this Court is unable to agree with the contentions raised by the learned counsel for the appellant.

13. With regard to this argument, this Court notes that clause (e) and (f) of Section 6(2) of the Passport Act are exclusive of each other. It can be observed that clause (e) of Section 6(2) pertains to cases in which the applicant have completed 05 years from the date of conviction, and, on the other hand, clause (f) of Section 6(2) pertains to cases which are pending before the court for trial. This essentially reveals that clause (e) deals with situations where no appeal from conviction is pending, as in cases where an appeal would be pending, the provision of clause (f) would come into play, since it is



settled law that an appeal would amount to continuance of criminal proceedings. In this regard, a reference can be made to the decision of Hon^{ble} Apex Court in *Akhtari Bi v. State of M.P. (2001) 4 SCC 355*, wherein it has been held as under:

"5. ...Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction..."

14. In the present case, the appellant's appeal against his conviction is pending before this Court since the year 2010. Consequently, it can be held that the case of the applicant is covered by clause (f) of Section 6(2) of the Passports Act, 1967, as the appeal of the applicant against the conviction recorded by learned Trial Court is pending before this Court. Thus, the appellant's situation falls within the purview of the aforesaid notification, conferring upon this Court, the requisite authority to exercise discretion and grant exemption."

10. Therefore, this Court has the power to grant exemption or no objection for the purpose of issuance/renewal of passport to the appellant herein, whose criminal appeal is pending before this Court.

11. In the present case, this Court notes that the instant appeal has been pending since the year 2011. The passport of the appellant had been reviewed in past by the passport authorities after the permission to do so had been granted by the learned Trial Court, and the same was valid till the year 2022. The appellant has been out on bail for more than 13 years, and no adverse report has come on record that he has misused the liberty so granted to him.

12. Thus, considering the overall facts and circumstances of the case, there are no grounds to refuse the relief as prayed for in this application. It is, therefore, directed that the passport of the appellant



herein be renewed by the concerned passport office, as per applicable rules.

13. Accordingly, the present application stands disposed of.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 5, 2024/ns