

Court No. - 91

Case :- APPLICATION U/S 482 No. - 25611 of 2021

Applicant :- Remo D'Souza

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shivam Yadav, Sumit Suri

Counsel for Opposite Party :- G.A., Satyendra Kumar Singh

Hon'ble Syed Aftab Husain Rizvi, J.

Heard learned counsel for the applicant, Ms. Sushama Soni, learned AGA for the State, and learned counsel for the opposite party no.2.

This application U/s 482 Cr.P.C. is filed to quash the orders dated 08.10.2021 passed by ACJM, court no.3 Ghaziabad and order dated 29.10.2021 passed by Additional Sessions Trial court no.1 Ghaziabad (computer no.13904 of 2021) (*Remo D'Souza vs. Satendra Tyagi and another*) arising out of case crime no.1725 of 2016, under section 420, 406, 386 IPC, P.S. Sihani Gate, District Ghaziabad.

By the impugned order, the request for the release of passport of the applicant has been refused.

Applicant is an accused in case crime no.1725 of 2016 case no.5406 of 2020 under section 420, 406, 386 IPC, P.S.-Sihani Gate, District-Ghaziabad pending before the ACJM court no.3 Ghaziabad. He moved an application dated 30.09.2021 for release of his passport alleging therein that applicant wants to go Dubai as he has entered into an agreement on 07.09.2021 to shoot a programme from 22.09.2021 to 21.12.2021. His passport is deposited with the SSP, Ghaziabad and it was prayed that the passport be released for two months. The learned Magistrate by the impugned order dated 08.10.2021 rejected the aforesaid application. Then the applicant preferred a criminal Revision No.209 of 2021 which has also been dismissed by the court of Additional Sessions Judge court no.1 Ghaziabad vide

order dated 29.10.2021.

The submission of the learned counsel for the applicant is that the applicant is director and choreographer of films and he is one of the reputed names of the Film and Television Industry in India and he belongs to cultured family and has deep-roots in the Society. He is carrying all the business in the name of a Company named as *Remo D'souza Entertainment Pvt. Ltd.* The applicant is on anticipatory bail in case crime no.1725 of 2016 under sections 420, 406, 386 IPC P.S. Sihani Gate, District Ghaziabad. One of the conditions mentioned in the order of anticipatory bail dated 14.11.2019 is that "*the applicant shall not leave India without previous permission of the court and if he has pass-port, the same shall be deposited by him before SSP/ SP concerned.*" In compliance of the aforesaid order the applicant has deposited his passport with S.S.P. Ghaziabad. Learned counsel further contended that the learned Magistrate while rejecting the application has given reasoning that since charge-sheet has been submitted and the case is pending before the court, therefore, the passport cannot be released. This Court while granting bail has not barred the applicant from traveling abroad, the learned Magistrate has misconstrued the directions/ conditions imposed by this Court. Learned revisional court also failed to appreciate the matter in a justifiable manner. Both the court below have failed to apply judicial mind over the issue and in a cryptic manner has rejected the application as well as the Revision. Learned counsel placed reliance on the case of ***(Parvez Noordin Lokhandwalla vs. State of Maharashtra & another), 2020 SCC OnLine SC 807 .***

Learned AGA and learned counsel appearing for opposite party no.2 submitted that applicant is an accused and the trial is pending. He has disposed of his entire property. He is very

clever with criminal history, if he be permitted to go abroad, he will not return back and will abscond. Learned Magistrate after considering the entire facts and material, has rightly rejected his application and learned revisional court also not finding any merit, has dismissed the Revision. There is no illegality in the impugned orders.

It is undisputed that applicant is an accused and the trial is pending before the Magistrate court. He is on anticipatory bail vide order dated 14.11.2019 while granting anticipatory bail, this Court has been pleased to impose some conditions. Condition no.(iv) is as follows:-

"(iv) The applicant shall not leave India without the previous permission of the Court and if he has passport the same be deposited by him before the S.S.P./S.P. concerned."

In compliance of the aforesaid conditions, the applicant has deposited his passport with SSP Ghaziabad. The condition imposed by this Court is that applicant accused shall not leave India without previous permission of the Court. In this condition the word '*court*' refer to the court concerned i.e. the trial court. The learned trial court has rejected the application while observing that the passport has been deposited in terms & conditions imposed by Hon'ble High Court. It is true that passport has been deposited in compliance of the condition by this Court but at the same time this Court has given liberty to the applicant that he may go abroad after seeking permission of the trial court. There is no blanket ban on his foreign trip, what is required is previous permission of the trial court before leaving India and for this, his passport is to be released for a definite period for which the applicant accused wants to go abroad.

It appears that application was moved by the applicant on 30.09.2021 alleging therein that according to agreement dated 07.09.2021 he has to go Dubai from 22.09.2021 to 21.12.2021 and it was prayed that his passport be released for two months. The application was moved on 30.09.2021 while according to agreement, he has to go Dubai on 22.09.2021 to 21.12.2021. No prayer was made for permission to go abroad. Applicant should have move application for permission to go abroad with reasons and mentioning the period for which he wants to go abroad and should have move the application before the period of commitment/ journey.

Considering the aforesaid facts and circumstances of the case and submissions of the learned counsel for the parties, this application U/s 482 Cr.P.C. is ***disposed of*** with a direction that applicant may move fresh application before the trial court for permission to leave India mentioning the grounds and reasons for his travel to abroad. The learned trial court shall consider all the facts and circumstances of the case and particularly the profession and business commitment of the applicant and after hearing both the parties may pass appropriate order on it.

Order Date :- 5.4.2022
C. MANI