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

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Reserved on: 19.03.2024
Pronounced on: 20.03.2024+ **CRL. A. 1294/2010**

SYED ABU ALA

..... Petitioner

Through: Mr. Yogesh Saxena and Ms.
Priya Saxena, Advocates

versus

NCB

..... Respondent

Through: Mr. Subhash Bansal, Sr.
Standing Counsel for the State
with Mr. Shashwat Bansal,
Advocate.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.****CRL. M.A. 443/2024**

1. The instant application under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of appellant/applicant seeking necessary permission to applicant to visit *Makka-Madina* at Saudi Arabia to perform *Umrah* and for necessary directions to the Regional Passport Officer, New Delhi to issue passport in favour of appellant.



2. Briefly stated, facts of the present case are that the applicant herein had been convicted for commission of offences under Section 29 read with Section 21(c) of NDPS Act, *vide* Judgment dated 25-08-2010 passed by learned Trial Court. Thereafter, *vide* order on Sentence dated 03-09-2010, the applicant had been sentenced to undergo Rigorous Imprisonment for 11 years 6 months along with fine of Rs. 2,00,000/-, the present applicant was further convicted under section 25A of NDPS Act and also sentenced to undergo RI for 5 years with fine of Rs. 50,000/-. The applicant has undergone a sentence of about 10 years and 3 months and has deposited the fine. The applicant had then preferred an appeal against conviction before this Court, and the sentence of the applicant was suspended by this Court *vide* order dated 30.05.2011 with the condition that the applicant shall not leave the City of Delhi and shall surrender his passport.

3. Learned counsel for the applicant argues that the applicant has complied with the terms and condition of the order of suspension and surrendered his passport issued on 30.01.1992 with expiry on 29.01.2002 from Regional Passport Office, Delhi. It is further argued that applicant is continuously complying with all the terms and conditions of order of suspension. It is submitted that the applicant is aged about 73 years old and as per his last wish he wishes to visit sacred place i.e. *Makka Madina* in Saudi Arabia to perform *Umrah* in the First Week of February 2024. It is submitted that to perform *Umrah* pilgrimage, one has to take 3 weeks. It is also argued that the



appellant has applied for re-issue passport with the Regional Passport Office, New Delhi on 26.12.2023. Thus, it is prayed that the applicant is granted permission for a period of 4 weeks to visit Makka Madina at Saudi Arabia to perform Umrah, and direct Regional Passport Officer New Delhi to reissue, the passport in favour of appellant to enable him to visit, Saudi Arabia to perform Umrah.

4. *Per Contra*, Learned Special counsel for NCB argues that that the contents of the petition are reiteration of conditions imposed by this Hon'ble Court *vide* its order dated 30-05-2011 while suspending the sentence of the applicant. It is submitted that the compliance of the conditions as stipulated therein are mandatory for the appellant to abide. It is further argued that the applicant had been convicted *vide* impugned judgment dated 25-08-2010 and the present appeal is pending since long i.e. year 2010. It is submitted that this appeal had been convicted for a serious offence under the NDPS Act, and the Appeal is pending since long, therefore, it is in the interest of justice to hear the Appeal in finality and may not consider the present application at this stage. It is submitted that 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.



5. This Court has heard arguments addressed by learned counsel for the applicant and learned Special Counsel for NCB and has perused material placed on record.

6. 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;"

7. 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.

8. 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."

9. 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.

10. In the present case, this Court notes that the instant appeal has been pending since the year 2010. The applicant who is seeking permission to go abroad to Saudi Arabia, for the purpose of performing Hajj Pilgrimage, is aged about 73 years, and was sentenced to undergo imprisonment for a period of 11 years 6 months, had already undergone a period of 10 years 3 months in judicial custody, before his sentence was suspended by this Court *vide* order dated 30.05.2011. The applicant has been out on bail for past more 13 years, and no adverse report has come on record that he has misused the liberty to granted to him.

11. In the present case, it is important to highlight that the applicant is around 73 years old and has expressed a strong desire to undertake the Hajj pilgrimage, a sacred obligation in the Muslim faith.



Understanding the significance of the Hajj pilgrimage, this Court finds it imperative to facilitate and enable him to fulfill this religious duty. The Hajj pilgrimage holds immense significance in the Islamic faith, representing one of the five pillars of Islam, and is a religious duty for every Muslim. Its importance cannot be overstated, both spiritually and culturally, for Muslims. The Court recognizes its duty to balance legal obligations with compassion, empathy, and practical understanding. This Court is not inclined to obstruct the appellant's religious obligations solely because his appeal has been pending for years.

12. Considering overall facts and circumstances of this case, this Court is inclined to allow the present application. It is, therefore, directed that the passport of the appellant herein be renewed by the concerned passport office, as per applicable rules. The applicant is accordingly permitted to go abroad for a period of one month to Saudi Arabia for performing Hajj/Umrah pilgrimage on the following conditions:

- i. The applicant shall furnish a personal bond of Rs.25,000/- with one surety of like amount to the satisfaction of concerned Trial Court;
- ii. The applicant shall inform the concerned Trial Court about his itinerary of travel including the date of his departure and arrival;



- iii. The applicant shall not exit immigration at the transit points, if any;
 - iv. The applicant shall also file a copy of e-tickets as well as passport containing the entry regarding his visit, immediately upon return to India before the Trial Court.
13. Accordingly, the present application stands disposed of.
14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2024/hs