


<p>MHNG030289582023</p> 	<p><u>R.C.C. No. 4131/2023</u> <u>State Vs. Mohd. Naushad Ansari & Ors.</u> <u>Order Below Exh. 21</u> (Passed on 18.11.2024)</p>
---	---

1. This is an application filed by accused No. 2 – **Mohd. Abbas Mohib Ansari**, Age – 49 years, Occ : Pvt., R/o. R.K. Layout, Plot No. 37, P.S. Yashodhara Nagar, Nagpur for issuance of passport for performing Umrah (Religious Pilgrimage). He submitted that he want to perform Umrah (Religious Pilgrimage) at Saudi Arabia for which the passport is necessary. Hence, he prayed for issuing no objection certificate in the name of passport office for issuance passport to accused No. 2.

2. The learned APP opposed the application on the ground that accused may abscond and prolong the case.

3. On perusal of record, it appears that accused is facing trial for the offence punishable u/sec. 498-A, 323, 504, 506 r.w. 34 of IPC. As to prayer regarding issuance of direction to passport authority to issue the passport of present applicant is concerned, here it is proper to mention the observations given by the Hon'ble Bombay High Court in the case of **Ashok Govindrao Dingrani Vs. State of Maharashtra** reported in 2016 SCC online Bombay 376. Wherein the Hon'ble Bombay High Court observed that,

“4. I find that the prayer is rather misconceived.

5. Section 6 of the Passports Act not only authorizes but requires the passport authority to refuse to issue passport in certain circumstances. Clause (f) of sub-section (2) of the said Section provides that, the passport authority shall refuse to issue a passport on the ground that proceedings in respect of an offence allegedly committed by the applicant for passport, are pending before a criminal court in India. It is not in dispute that the same

rules that apply for refusal to issue a passport, would apply for refusal to renew a passport also.

6. The rigors of the prohibition imposed by clause (f) of sub-section (2) of Section 6 of the Passports Act are diluted by a Government Notification {bearing No. G.S.R. 570(E) dated 25th August 1993} issued by the Ministry of External Affairs in exercise of the powers conferred by clause (a) of Section 22 of the Passports Act. It provides, inter alia, that the prohibition to issue passport to a person against whom a criminal case is pending before criminal court in India, would not apply, 'if such person produces an order from the concerned court, permitting him to depart from India'.

7. Thus, undoubtedly, the Court's intervention in the matter would be necessary, but only to the extent of granting permission to the applicant to depart from India; and not to the extent of issuing any direction to the Passport Authority to issue/renew the passport.

8. After hearing Mr.Shukla, it appears that the notion of the Passport Authority is that the applicant should produce a permission from this Court "for renewal of passport", and that it is only then that the Passport Authority can renew the passport. This notion is not correct. What the applicant is expected to secure from the court is a permission to depart from India, and not a 'No objection' to issue or renew a passport. This is very clear from a bare reading of the provisions of Section 6 of the Passports Act and the aforesaid notifications. The legal position appears to be that the Court's Jurisdiction in such cases would be limited to deciding whether or not to grant permission to an accused before it to go abroad during the pendency of the proceedings before it. Whether to issue a passport, or to renew it, is required to be dealt with by

the Passport Authority.”

4. In view of this observations, it is clear that, the prayer of issuance of direction to the passport authority for issuance of passport is not within the jurisdiction of this Court. Therefore, it is not tenable before this Court. But, this court has no objection for issuing or renewing of Passport of applicant as per rules. Hence, following order.

ORDER

1. The application is disposed of in following terms :

A. The passport authority is at liberty to consider the application of accused No. 2 **Mohd. Abbas Mohib Ansari**, Age – 49 years, Occ : Pvt., R/o. R.K. Layout, Plot No. 37, PS. Yashodhara Nagar, Nagpur i.e. present applicant for issue passport for performing Umrah (Religious Pilgrimage). This Court has no objection to issue the passport.

B. The accused shall submit xerox copy of passport in the court.

C. The accused or his Ld. counsel shall submit tour itinerary in the Court before the applicant leaves the Country.

D. The accused shall submit his residential address in the Court, during the period of his stay, where he intends to travel.

E. The accused shall give undertaking that he shall attend the Court as and when called upon, till the pendency of present case against him.

Date : 18.11.2024

(Smt. A. V. Khedkar-Garad)
Judicial Magistrate First Class,
(Court No. 4), Nagpur.

CERTIFICATE

I affirm that the contents of this P.D.F. file of Order are word to word same, as per original Order.

Name of Stenographer : Pravin T. Mandale