
(2010) 07 AHC CK 0201
In the Allahabad High Court
Case No : Writ Petition No. 2874 of 2010

Muneer Ahmad

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2010) 07 AHC CK 0201

Hon'ble Judges : Vedpal, J

Final Decision : Disposed Of

Judgement

Ved Pal, J.—This petition under Section 482 Cr.P.C. has been filed by the petitioner for setting aside the impugned order dated 30.6.2010 passed by the Additional Sessions/F.T.C.Court No.6, Lucknow in Criminal Misc. Case No.6/2010 relating to Sessions Trial No.325 of 2008 : State Vs. Muneer Ahmad whereby the application of the petitioner for issuance of permission in the form of "no objection certificate" to leave the country for Haj, was rejected.

2. It is submitted by the learned counsel for the petitioner that the learned court below passed the impugned order in flagrant violation of the provisions of the Article 21 of the Constitution of India as a right of the petitioner to travel abroad for Haj is preserved within the meaning of Article 21 of the Constitution and there was no compelling or compulsive reason for not according permission to petitioner to go abroad along with his wife and, thus, the impugned order, passed by the court below, is liable to be set aside and the said permission sought by the petitioner should be granted to the petitioner in the case pending against him to go abroad for Haj after completing due formalities of passport etc.

3. Learned A.G.A. On behalf of the opposite parties contended that there is no illegality or irregularity in the impugned order and the petitioner has not yet obtained the passport and Visa and he may apply before the court below for permission thereafter as is evident from the order passed by the learned court

below and thus the application of the petitioner before the court below was premature and the learned court below committed no mistake in rejecting the same as premature.

I have carefully considered the respective submissions made by the parties and perused the impugned order alongwith the ruling cited by the learned counsel for the petitioner.

4. It reveals from the perusal of the record that a Criminal Case being S.T.No.325 of 2008 : State Vs. Muneer Ahmad and others for the offences punishable under Sections 323, 504, 506 I.P.C. and 3(1) (x) of the SC & ST Act relating to police station, Saadatganj, District Lucknow is pending against the petitioner before the court below, which is at the stage of trial and the evidence is being recorded therein. The accused (herein petitioner) Muneer Ahmad moved an application before the court below that he along with his wife wants to go Saudi Arab for Haj for which passport and Visa etc. will be needed and in this connection police has to submit a report but the police is not prepared to submit its report until and unless permission is granted to the petitioner to go abroad for Haj by this court where the sole criminal proceedings against the petitioner is pending. This application was rejected by the learned court below by observing that the accused Muneer Ahmad (petitioner herein) has failed to produce passport and Visa and the question of according permission would arise if passport and Visa is produced before the court and before the production of the said document, the application is premature and accordingly the application was rejected.

5. It is no doubt that the provisions of Section 482 Cr.P.C. Can be invoked to do substantial justice between the parties and to prevent the abuse of process of the court. The right to travel abroad under Article 21 of the Constitution of India is not an unfettered right and reasonable restrictions can always be imposed on a person in the interest of justice, if any criminal case is pending against him in the country. In view of this, it is to be seen whether any restriction was imposed against the petitioner in the said criminal case. Hon"ble Supreme Court in case of Menka Gandhi Vs. Union of India : 1975 (1) SCC 248 has observed that the right of a person to travel abroad is preserved within the meaning of Article 21 of the Constitution of India. There is nothing in the impugned order that any restriction to travel abroad was ever imposed either in the case itself or in the bail order. In the fairness of the matter, if the petitioner sought permission of the court where criminal case is pending against him in the form of "no objection certificate", the petitioner cannot be said to be at fault or his application does not contravene any provision of law but it is in consonance with the law and fairness that he moved application seeking permission to go abroad for Haj which is a pious obligation for Muslims. If an accused wishes to go on Haj after complying with the condition to be imposed and the rules and regulations, he cannot be prevented from doing so until and unless there is an obstruction under the law or there is an apprehension that he will not return back to the country. The nature of the proceeding pending against the applicant, is not such on the basis of which it

cannot be said that he will not return back to the country. Without according permission by the court where criminal case is pending in the form of "no objection certificate", passport and Visa etc. cannot be issued as per rules. The petitioner has specifically stated in his application that in the matter to go abroad, police report is needed and police is not submitting the report because of the pendency of the said criminal case. In the circumstances, the rejection of application of the petitioner on the ground that he has not produced passport and Visa etc, and the application is premature, cannot be said proper. The formalities of issuance of passport and Visa etc. can only be completed after police report, which could not be submitted by the police due to pendency of the said criminal case. Thus by rejecting the application of the petitioner, court below has committed a manifest error on the ground stated above. The impugned order therefore is liable to be set aside. Permission in the form of "no objection certificate" may be granted to the petitioner after taking proper security and undertakings.

In view of the above, the impugned order dated 30.6.2010 passed by the learned court below in Criminal Misc. Case No.6 of 2010 relating to S.T.No.325 of 2008 : State Vs. Muneer Ahmad under Sections 323, 504, 506 I.P.C. is set aside. Petitioner may be granted permission in the pending criminal case in the form of "no objection certificate" to go abroad by complying with the conditions and undertakings herein below

- i. The petitioner shall furnish an FDR in the sum of Rs.2 lacs as security, before the court below for his return back in the country after the expiry of the Haj period and thereafter on his return to country to report before the court below within a period of seven days.
- ii. The petitioner shall furnish his address during his stay abroad and give undertaking that he shall not seek extension of his stay abroad on any ground including medical ground also.
- iii. The petitioner shall also authorise his counsel to appear on his behalf and to do all necessary acts in the progress of the suit and will give an undertaking that his counsel will not seek any adjournment in the case pending before the court below. The petitioner shall also surrender his passport on his return from abroad.
- iv. In case the petitioner furnishes security and comply the above conditions, the trial court shall issue permission in the form of "no objection certificate" to the petitioner in the pending criminal case to go abroad. This permission in the above form, shall be subject to the issuance of Passport, Visa and other necessary formalities, if any, to go abroad.

In view of the above directions/observations, the petition is finally disposed of, at this stage.