
(2018) 07 UK CK 0055

In the Uttarakhand High Court

Case No : Criminal Misc. Application(C-482) No. 1130 of 2018

Pooran Singh Fartiyal

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 352, 504, 506
Passports Act, 1967 — Section 22

Citation : (2018) 07 UK CK 0055

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Sanjay Bhatt, V.K. Jemini

Final Decision : Disposed Off

Judgement

LOK PAL SINGH, J.

1. Heard learned counsel for the parties at admission stage.
2. Present criminal misc. application under section 482 of Cr. P.C has been filed by the applicant for quashing the impugned order dated 06.07.2018 passed by the Judicial Magistrate, Champawat in criminal case no. 189 of 2016, State vs. Pooran Singh Fartiyal.
3. Brief facts of the case are that a criminal case no. 186 of 2016, State vs. Pooran Singh Fartiyal is pending against the applicant before the Court of Judicial Magistrate, Champawat, District Champawat, under Sections 352, 504, 506 of I.P.C.
4. It is contended that the applicant is an elected Member of Legislative Assembly from Lohaghat legislative constituency for the Uttarakhand Assembly. His name has been recommended by the State Government to

become the part of delegation to visit England, Switzerland and Germany. It

is further contended that applicant who applied for re-issuance of his passport before the passport authority, during the course of inquiry, it was

revealed that the aforesaid criminal case is pending against the applicant then the passport Officers asked the applicant to seek necessary permission

from the Court concerned to leave the country. Since, the applicant has to visit these aforesaid countries on behalf of the State of Uttarakhand and

permission is required from court concerned to leave the country.

5. An application no. 62Ka/1 was moved by the applicant before the learned court below seeking permission to visit England, Switzerland and

Germany.

6. The learned court below vide order dated 6.07.2018 has rejected the application on the ground that the trial of the case is in progress.

7. Learned counsel for the applicant has placed reliance on the guidelines issued by the Ministry of External Affairs, notification no. G.S.R. 570(E),

dated August, 25, 1993. The averments of Notification are extracted hereunder:

â??In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 to 1967) and in supersession of the notification of

the Government of India in the Ministry of External Affairs No.G.S.R. 298 (E), dated the 14th April, 1976, the Central Government, being of the

opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to

have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to

depart from India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions,

namely:-

(a) The passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specified a period for which the passport has to be issued; or

(ii) If no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) If such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport

shall be issued for one year; or

(iv) If such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport

shall be issued for the period of travel abroad specified in the order.

(b) Any passport issue in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not traveled

abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified.

(c) Any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity

of the passport or specifying a period for travel abroad;

(d) The said citizen shall give an undertaking in writing to the passport-issuing authority that he shall, if required by the court concerned, appear

before it at any time during the continuance in force of the passport so issued.â??

8. Counsel for the applicant would submit that the case pending against the applicant is not of heinous offence, the applicant is a respectable person of

the society and has no criminal history and no other case except the case mentioned above is pending against the applicant. It is further submitted that

there is no chance of absconding and non-returning of the petitioner to the country back. The Counsel for the petitioner further submit that the

petitioner is ready to adhere the condition, if any, imposed by this Court on permitting him to leave the country and visit England, Switzerland and

Germany with the delegation.

9. Having considered the arguments of learned counsel for the parties and after perusal of the guidelines issued by the Ministry of External Affairs as

well as the gravity of the charges of criminal case levelled against the petitioner and also considering the case that the petitioner has already been

enlarged on bail in the aforesaid case and he has not misused the bail granted to him.

10. A perusal of the impugned order it would reveal that the learned court below has rejected the application on unfounded reasons, therefore the

impugned order dated 06.07.2018 is quashed.

11. The criminal misc. application under Section 482 of Cr. P.C stands disposed of on the following conditions:

(i) The applicant shall submit an affidavit before the passport authority to the effect that if passport authority would require his passport after his return

he will submit the passport before the passport authority, Dehradun.

(ii) Applicant shall also file an affidavit before the Judicial Magistrate, Champawat, District Champawat stating therein that after return from abroad,

he will participate in the criminal trial pending against him.

12. Let a certified copy of this order be supplied to the applicant today itself on payment of usual charges.