

Gujarat High Court

Sirajbhai vs State on 21 April, 2011

Author: J.C.Upadhyaya,&Nbsp

Gujarat High Court Case Information System

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CR.MA/4622/2011 4/ 4 ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL  
MISC.APPLICATION No. 4622 of 2011

In

CRIMINAL  
MISC.APPLICATION No. 1453 of 2009

In  
CRIMINAL APPEAL No. 210 of 2009

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SIRAJBHAI  
H MEMON - Applicant(s)

Versus

STATE  
OF GUJARAT & 1 - Respondent(s)

=====

Appearance :  
MRRUSHABHRSHAH  
for Applicant(s) : 1,  
MS  
CM SHAH, ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,  
MR YN  
RAVANI for Respondent(s) :  
2,  
=====

CORAM

:

HONOURABLE

MR.JUSTICE J.C.UPADHYAYA

Date

: 21/04/2011

ORAL

ORDER

Heard Mr.Rushabh Shah, ld.advocate for the applicant, Ms.CM Shah, ld.APP for respondent No.1 - State and Mr.YN Ravani, ld.advocate for respondent No.2 - CBI.

By means of filing this application, the applicant - original appellant prays for deletion of condition regarding deposit of passport before the trial Court, as the applicant intends to go to Saudi Arabia for Umra pilgrimage.

Mr.Shah, ld.advocate for the applicant stated that the applicant - appellant came to be convicted by learned Special Judge, CBI Court No.3, Ahmedabad in Special Case No.45 of 1988 for the offences punishable under Sections 420, 468 and 471 IPC and was awarded sentence. It is submitted that throughout the pendency of the Special Case, since 1988, till he came to be convicted by the Special CBI Court, he was on bail and he did not misuse the liberty. It is further submitted that after the applicant came to be convicted and sentenced, he preferred above-referred criminal appeal before this Court and vide order dated 17.04.2009 passed in Criminal Misc.Application No.1453 of 2009, the sentence awarded to the applicant - appellant - original accused came to be suspended on the condition of his furnishing personal bond as well as surety, and upon deposit of his passport before the trial Court. Mr.Shah, ld.advocate submitted that pursuant to said condition, the applicant deposited his passport before the trial Court. Mr.Shah, ld.advocate for the applicant - appellant stated that after getting back the passport from the trial Court, the applicant shall have to undergo necessary formalities regarding visa etc. and after performing said formality, he would be in a position to go out of India. Mr.Shah, ld.advocate for the applicant, therefore, submitted that, at this

stage, the permanent deletion of the condition regarding the deposit of passport is not requested, but that condition may be, at present, suspended atleast for three months, so that the applicant can go out of India to perform his religious ceremony of Umra and return back within that period, and he undertakes to re-deposit his passport as soon as the period of three months shall be over, and as soon as he would get visa, he would file in writing his time schedule in this matter. It is submitted that now the applicant intends to go for religious visit in Umra and, therefore, he is in need of the passport. Therefore, it is submitted that the application may be allowed.

Ms.Shah, ld.APP for the respondent No.1 - State and Mr.Ravani, ld.advocate for respondent No.2 - CBI submitted that the condition regarding deposit of passport should not be permanently deleted and the applicant should file his time schedule in this matter.

Having considered the submissions advanced on behalf of both the sides, so also considering the contents of this application as well as the order dated 17.04.2009 passed in Criminal Misc.Application No.1453 of 2009, this Court is of the opinion, at this stage, that, since the main criminal appeal is pending, the condition laid down at the time of suspension of sentence requiring the applicant to deposit his passport before the trial Court, cannot be permanently deleted. However, considering the facts and circumstances of the case, so also the submissions advanced by Mr.Shah, ld.advocate for the applicant, the aforesaid condition is required to be suspended for a reasonable period, so that during that period, the applicant can get back his passport from the trial Court and should complete his formality regarding visa etc. and should go for the aforesaid religious tour and can return back from the tour. Accordingly, the passport is required to be returned back by the trial Court for the period of three months hereof. As soon as said period would be over, immediately, the applicant shall re-deposit his passport before the trial Court.

For the foregoing reasons, the application is partly allowed. The condition laid down in the order dated 17.04.2009 in Criminal Misc.Application No.1453 of 2009 regarding deposit of passport by the applicant, is suspended for the period of three months hereof, on the condition that within the said period of three months, the applicant shall complete his formalities regarding visa etc., as well as during said period, he should complete his religious tour and as soon as said period of three months shall be over, the applicant shall immediately re-deposit his passport before the trial Court. It is further directed that as soon as the applicant gets visa, and other formalities to go for religious tour shall be over, the applicant shall file his time schedule in writing in this matter. The above condition stands suspended for three months only.

Rule is made absolute to the above extent.

DS permitted.

(J.C.UPADHYAYA, J.) (binoy) Top