

**IN THE COURT OF SPECIAL JUDGE DESIGNATED UNDER NIA ACT**  
**SRINAGAR**

**R. No.**  
**78/2023**

**Date of Instt.**  
**26-04-2023**

**Date of order**  
**31-05-2023**

Waheed ur Rehman Para Vs UT of J&K through V/s.  
SHO P/S CIK

FIR 31/2020  
U/Ss13, 17, 18, 38, 39, 40 of UAP Act  
U/Ss 120-B, 121, 121-A, 124-A of IPC

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In the Matter of : Application of behalf of applicant/Accused namely Waheed ur Rehman Para seeking permission from the court to go outside the UI of Jammu And Kashmir for the reasons delineated in this application.

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**Present :** APP for UT.

M/S. Naveed Naseem Advocate and associates for the applicant.

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**CORAM: Sandeep Gandotra**

**ORDER**

1. By virtue of this application the applicant/accused has sought indulgence of this court in seeking permission to leave the station on the grounds inter alia mentioned in the application. It is mentioned on the application that the applicant/accused was admitted to bail by the Hon'ble High Court of J&K and Ladakh vide its judgment dated 25-05-2022 and while enlarging the applicant/accused on bail the Hon'ble High Court of J&K and Ladakh was pleased to attach some conditions to the bail order.
2. That, as is evident from the order supra that the conditions attached to the grant of bail inter-alia provide that before leaving the Union Territory of Jammu and Kashmir the applicant/accused has to seek the permission of this court; that the applicant/accused states and submits that he has been selected as Inaugural Peace Fellow of the prestigious YALE Peace Fellowship, 2023,

commencing from September 2023 and slated to end in November 2023 at YALE University's International Leadership Center in the United States of America; that in faithful compliance with said order of the Hon'ble High Court of J & K and Ladakh dated 25-05-2022, whereby the accused was enlarged on bail, the accused surrendered his passport before the Investigating Officer of CIK; that in view of the fact that the applicant/accused has been selected as the Inaugural Peace Fellow at the YALE University, USA the applicant carves indulgence of this court for issuance of appropriate directions to the non-applicant(s) for release of his passport as also issuance of directions granting permission to the applicant/accused to leave the territorial limits of UT of J&K and to visit the United States of America from September 2023 till ending November 2023 in order to facilitate him to pursue the coveted Peace Fellowship programme at the YALE Intentional Leadership Centre; that the applicant/accused being presumed in the law to be innocent coupled with the fact that the applicant/accused has already been admitted to bail on merits, conditions whereof have never been violated by the applicant herein and the applicant deserves to be accorded the permission to travel abroad and pursue this prestigious opportunity. Needless to add that this Hon'ble Court can put the applicant to any terms and conditions as deems fit in order to facilitate the grant of permission in favour of the applicant herein.

3. Finally release of Passport and grant of permission in favour of the applicant/accused to pursue the coveted Peace Fellowship Programme at the YALE International Leadership Center, the United States of America from September 2023 till ending of November 2023 has been solicited. The application is supported by an affidavit, copy of invitation to applicant/accused from Director YALE International Leadership Center and a copy of letter to Union Home Secretary, Govt. of India from Associate Director.

4. Report was called from office and Ld. APP was directed to file objections. Ld. APP has filed objections along with report of Sr.SP SIA Srinagar. APP has resisted the application and filed detailed objections stating therein that the passport of the applicant/accused has been retained by the investigating agency on the direction of the Hon'ble High Court of J&K and Ladakh. The Hon'ble High Court vide its order dated 22-05-2022 while admitting the applicant/accused on bail was pleased to attach the conditions to the bail order granted in favour of the accused. One important condition among others is *“that he shall surrender his passport, if any, before investigation officer against proper receipt”*; that the application is not maintainable since permitting the applicant to visit abroad will ipso facto nullify the specific condition imposed by the Hon'ble High Court. It would amount to reviewing the decision of the Hon'ble High Court and the court lacks jurisdiction to that extent; that there is a statutory bar under section 51 of UAP Act in permitting the applicant/accused since as a special provision under UAP Act from subverting the process of law through various means.
5. APP has stated in his objections that besides fleeing from the country there are genuine apprehensions of the applicant availing the services of anti-India entities within Diaspora to influence SIA's MLAT request to 'evidence holding parties' such Google, to frustrate the investigation efforts. UAP Act law being a special law, is not in favour of allowing the accused persons to move outside the country, contrary to ordinary jurisprudence. That the application is baseless and manufactured, owing to his involvement in serious and heinous offences under UAP Act. The prosecution case is at evidence stage and the evidence has come on record inclined to the commission of offences by the applicant accused and tangible evidence collected by the investigating agency which is to be produced before the trial court. Admitting the application at this stage would not only be untimely and inopportune but

will also be not in the interest of justice. While the prosecution maintains to verify the veracity of such claim, there is every likelihood that the applicant/accused would have concealed the fact to the concerned University (YALE) that he is facing the terror charges in several other cases pending trial before the court of law. Under the UN Convention the applicant/accused was duty bound to make such declaration to the University of (YALE). The essence of Peace Fellowship Program at the University of (YALE) is in contrast and antithetical to the activities of the accused. The fellowship is a mere means which has been managed by the applicant primarily to impede and disrupt the ongoing lawful 'further investigation' and also to derail the proper trial of the case; that the charges against the applicant accused are not only serious but multifarious also. The investigating agency has already taken up the matter with the Ministry of Home Affairs (India) and a formal request for assistance (MLAT) has been forward to the foreign country (USA) through the central authority of India. Incidentally the accused is also trying to visit the country where a formal request for assistance has been forwarded. There is thus every likelihood that the accused will interfere 'directly or indirectly' with the investigation which is underway abroad which would cause serious prejudice to the ongoing investigation as well as the proper trial of the applicant accused.

6. That, the charges against the applicant/accused are serious in nature. These are terror charges which include having close links with foreign/local terrorists as well as funding, aiding and supporting the terrorists' activities or terrorists' organization. The accused is habitual offender and has been facing trial under the provisions of UAP Act before the court of Special Judge (Designated under NIA Act) at Jammu also. With these charges the efforts of the accused to move out of the court's jurisdiction is quite obvious. There is every possibility that if the accused is permitted to visit abroad, he will not only

abscond and jump over the bail but also will take political asylum in the visiting country. Moreover, there is also a possibility that the accused may indulge in vicious smear campaign of defaming India's reputation and credibility at international forums or gathering. The object is to protract the trial and to cause subversion of the evidence collection process of the trial court. Finally, it is prayed that the application may be dismissed and the same shall be in consonance with equity, law and justice.

7. Heard Ld. Counsel for the applicant, Ld. APP for the state, called the main file for perusal and also considered the rival contentions. I have gone through the contents of the application, office report, objections filed by the prosecution; order passed by Hon'ble High Court of J&K and Ladakh, as well as the court file and also applied my mind to the facts and circumstances of the case.
8. The applicant has filed this application seeking permission to leave the UT of J & K and go to the USA for pursuing the Peace Fellowship Programme at YALE International Leadership Center from September 2023 to ending November 2023. The applicant is facing trial in this court in case FIR No. 31/2020 of P/S CIK Srinagar and vide order dated 20-07-2021 charges for offences under Sections 13, 17, 18, 38, 39, 40 of UAP Act and under Sections 120-B, 121, 121-A, 124-A of IPC have been framed against the applicant/accused. The next date has been fixed for prosecution evidence.
9. The applicant has been granted bail by the Hon'ble High Court of J & K and Ladakh vide judgment dated 25-05-2022 subject to conditions mentioned herein below:-
  - i. That the appellant will make himself available before the investigating officer of the case as and when required to do so.
  - ii. That he will not leave the UT of Jammu and Kashmir without prior permission of the learned trial court.
  - iii. That he shall surrender his passport, if any, before the investigating

officer against proper receipt.

iv. That he will appear before the learned trial court on each and every hearing of the case.

10. Ld. APP has forcefully argued that this application is not maintainable because the applicant has been granted bail by the Hon'ble High Court of J & K and Ladakh; therefore, the applicant should seek permission from the Hon'ble High Court of J & K and Ladakh for pursuing the said Fellowship at the USA. However, this court is not in agreement with the said argument of Ld. APP because as per order of the Hon'ble High Court of J & K and Ladakh granting bail, the applicant has been directed not to leave the UT of J & K without prior permission of the trial court. This makes it clear that the said application is maintainable before this court.

11. Another argument of the Ld. APP is that in view of the Section 51 of UAP Act there is complete bar on any permission being granted to the applicant because his Passport is deemed to have been impounded. It would be profitable to reproduce the Section 51 of UAP Act herein below:-

**Section 51-**

*“Notwithstanding anything contained in any other law for the time being in force, the passport and the arms license of a person, who is charge-sheeted for having committed any offences under this Act, shall be deemed to have been impounded for such period as the court may deem fit.”*

12. This court is again not in agreement with the said argument of Ld. APP because under Section 51 of UAP Act, the Passport *“shall be deemed to have been impounded for such period as the court deems fit”*. A plain reading of the said section makes it clear that the discretion has been granted to the trial court to judiciously decide the period for which the Passport shall be impounded and in particular facts and circumstances of the case said

Passport can be released by the trial court.

13. Now let's see whether the applicant has made out a case for grant of permission to go to the USA for pursuing YALE Peace Fellowship 2023? As already stated herein above the charges have been framed against the accused/applicant for offences under Sections 13, 17, 18, 38, 39, 40 of UAP Act and under Sections 120-B, 121, 121-A, 124-A of IPC which are very grievous and punishable with death and imprisonment for life.
14. The allegations against the applicant are that he is having close links with foreign and local terrorists as well as that he is funding, aiding and supporting terrorist activities/terrorist organizations. It is pertinent to mention here that Investigating Agency has already taken up the matter with Ministry of Home Affairs Govt. of India and a formal request for assistance (MLAT) has been forwarded to the USA. One cannot lose sight of the fact that the applicant has filed this application seeking permission to go to that country only i.e. the USA for pursuing Peace Fellowship 2023 to which MLAT request has been forwarded. As such, the argument of the Ld. APP that there are chances of the applicant fleeing from the country and there are apprehensions of the applicant trying to influence the collection of evidence in the USA merits consideration.
15. It is pertinent to mention here that the applicant had earlier also moved an application to go to Mumbai because his father was unfortunately diagnosed with Cancer and this court vide order dated 21-04-2023 had granted him the permission on humanitarian grounds for 15 days to take his father to TATA Memorial Center Mumbai up to 15<sup>th</sup> April 2023. However, the facts of the present application are totally different because not only the trial of the case will get hampered which is at evidence stage but there are genuine apprehensions of the applicant fleeing from the country and him trying to disrupt the collection of evidence in the USA for which MLAT request has

been sent through Govt. of India.

16. For the reasons discussed hereinabove the application is dismissed and shall for part of the main file after due compilation under rules.

**Announced**  
**31.05.2023**

**Additional Sessions Judge**  
**Special Judge Designated**  
**Under NIA Act Srinagar**  
**J. O. Code: JK00116**