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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 26th July, 2023*

+ **CRL.A. 585/2003**

MOHD. YASIN PATEL ALIAS FALAHI Appellant

Through: Mr. Trideep Pais, Sr. Advocate
with Ms. Sanya Kumar, Ms.
Gargi Sethee & Ms.
Sudakshina Prasad, Advocates.

versus

STATE

..... Respondent

Through: Mr. Ritesh Kr. Bahri, APP for
the State with Insp. Sanjeev
Kumar, PS Special Cell/S.R.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 19459/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.A. 19458/2023

3. *Vide* the present application, the applicant/appellant is seeking following reliefs: -

“(i) Modify the condition laid down in paras (i) and (iv) of the Order dated 27.08.2004 passed by this Hon’ble Court in Criminal Appeal No. 585 of 2003; and

(ii) Permit the Applicant to leave the limits of the NCT of Delhi in order to travel to Chicago, United States of America for a period of four weeks.”



4. *Vide* Judgment dated 16.07.2003, the applicant/appellant was convicted for the offences punishable under Section 20 of Prevention of Terrorism Act (POTA) and Section 124-A of the Indian Penal Code (IPC). Thereafter, *vide* Order dated 21.07.2003, the applicant/appellant was sentenced to undergo 5 years (five) of imprisonment under Section 20 of POTA along with a fine of Rs. 25,000/- and in default to further undergo imprisonment of 1 year (one) and also to undergo 7 years (seven) of imprisonment under Section 124-A of IPC along with a fine of Rs. 25,000/- and in default to further undergo one year imprisonment. However, the said sentence imposed on the applicant/appellant was suspended *vide* Order dated 27.08.2004 by observing as under: -

“

ORDER

27.08.2004

Having heard Mr. Salman Khurshid, learned senior counsel and Ms. Mukta Gupta, standing counsel for the respondent, we are of the view that the appellants have made out a case for suspension of the sentence imposed upon them by the trial court. We, therefore, suspend the sentence imposed by the trial court on both the appellants subject to the appellants' furnishing personal bonds in a sum of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court. The enlargement of the appellants is further subject the following conditions:

- 1. Appellant No. 1, Mohd. Yasin Patel @ Falahi, shall not leave the limits of National Capital Territory of Delhi without the prior permission of this Court. In so far as appellant No. 2, Mohd. Ashraf Jaffary is concerned, it is directed that he may leave the limits of NCT of Delhi only for purposes of living and /or visiting Chandpur in Bijnaur district, UP, his native place.*
- 2. The appellants shall, before release from*



custody, furnish to this court with copies to the Investigating Officer, the addresses at which they will be residing and intimate the changes in such addresses, if any, in future.

3. The appellants shall not engage themselves in any illegal or unlawful activity while they are on bail.

4. The appellants shall report to the jurisdictional police station once a month.

Needless to say that in the event of violation of any one of the terms stipulated herein above, the present order shall be liable to be recalled and the appellants remanded to the custody.

The appeal shall now be posted for final hearing at its turn, and shall not be treated as part heard by this bench.

Delivery of the order to the parties dasti is permitted.”

5. The applicant/appellant undertakes that he shall return to India within the time limit to be granted by this Court.
6. The applicant/appellant further undertakes that he shall not seek any further permission on whatsoever ground.
7. Mr. Trideep Pais, learned Senior Counsel for the applicant/appellant, submits that the applicant/appellant has a wife, 3 (three) daughters and 2 (two) sons, who all are citizens of India, holding valid Indian passports, except the younger son, namely, Mr. Abdulla Mujahid Patel. Though Mr. Abdulla Mujahid Patel was holding a valid Indian passport, however, it had expired on 30.07.2019 and thereafter, the same has not been renewed till date.
8. The applicant/appellant submits that he is ready to surrender all the passports in respect of his wife, namely, Smt. Farhana Jafri, two sons,



namely, Mr. Yahiya Khalid Patel and Mr. Abdulla Mujahid Patel and one daughter, namely, Sadiya Yaseen Patel, before this Court along with surety as deems fit to this Court.

9. Thereafter, the applicant/appellant moved the Application bearing No. CRL.M.A. 8704/2007 to undertake Haj Pilgrimage at Makka and Madina by the State Haj Committee of Government of Delhi and *vide* Order dated 05.09.2007, the said application of the applicant/appellant was allowed and he was granted permission to perform Haj Pilgrimage under the auspices of the Haj Committee of India for 40 days (forty) in the month of December, 2007 on the terms and conditions as stipulated *vide* Order dated 27.08.2004.

10. Mr. Ritesh Kumar Bahri, learned Additional Public Prosecutor for the State, has strongly opposed the present application by submitting that the applicant/appellant is an American citizen and is holding American passport and is high-flight risk person and if permission is granted to him, he shall not return to India.

11. During the course of hearing, we put a query to the learned Additional Public Prosecutor for the State has clarified that the applicant/appellant was convicted as he was pasting the poster and making the propaganda on the issues mentioned in the poster and he has produced the said poster, wherein it is written as under: -

“
Destroy Nationalism
Establish
KHILAFAH

STUDENTS ISLAMIC MOVEMENT OF INDIA “

12. In addition to above, learned Additional Public Prosecutor has produced one photograph posted on the cover page of an Urdu Magazine,



namely, “*Rudad*” (report of activities of SIMI) of year 1998-2000, wherein the applicant/appellant can be seen delivering a speech in a function organized by the Students Islamic Movement of India.

13. Mr. Ritesh Kumar Bahri further submits that the applicant/appellant was arrested by the officers of the Special Cell, Delhi Police, while pasting the said poster on the wall.

14. Further, when this Court put a query to the learned Additional Public Prosecutor since this issue is of 2003, whether any photograph or video was made while the applicant/appellant was posting that said poster on the wall. He replied in negative.

15. Learned Additional Public Prosecutor for the State further submits that *vide* Order dated 29.05.2018 passed in the Application bearing No. CRL.M.A. 10755/2018 containing the same prayer was dismissed. However, learned Additional Public Prosecutor does not dispute.

16. It is not in dispute that *vide* Order dated 08.12.2022 passed in CRL.M.A. 22880/2022, the applicant/appellant was allowed to travel to Chandpur, Uttar Pradesh (native place), Kanpur, Uttar Pradesh and Dehradun, Uttarakhand. *Vide* Order dated 08.04.2005 passed in CRL.M.A. 1086/2005, the applicant/appellant was also allowed to visit Ahmedabad, Gujarat for a period of two weeks. He further concedes that whenever the applicant/appellant was granted permission to leave the territory of this country or jurisdiction of this Court, he has never violated the conditions imposed by this Court.

17. The present application has been filed on the ground that the father of the applicant/appellant, namely, Mr. Gulammohammed V Patel, who is 89 years old, is suffering from various old-age ailments and is unable to walk



and applicant/appellant's mother is also 86 years old, both are the citizens of United States of America (U.S.A.) and are currently living at 4820 N Kedzie Ave Apartment, 301 (Home), Chicago, IL 60625, U.S.A. Due to deteriorating condition of father of the applicant/appellant, he would like to pay a visit for a period of 4 weeks.

18. Learned Additional Public Prosecutor for the State submits that if this Court is inclined to allow the present application, some conditions be imposed on the applicant/appellant, so that he may not even think of violating the said terms and conditions imposed by this Court.

19. In view of above discussion and submissions made on behalf of learned counsel for the parties, we are of the considered opinion that there is merit in the present application.

20. Accordingly, we allow the applicant/appellant to travel to Chicago, U.S.A. for the abovementioned purpose for the period of 4 (four) weeks from the date he actually departs from Delhi,, subject to furnishing a personal bond in the sum of Rs. 1,00,000/- in respect of him with the Surety Bond of like amount each to be furnished by his wife, two sons and one daughter with the Register General of this Court.

21. The original and photocopies of the passports in respect of applicant/appellant's wife, two sons and one daughter have been produced before this Court and the same have been perused and original passports have been handed over to the applicant/appellant. It is directed that the four sureties shall deposit their original passports with the learned Registrar General.

22. It is made clear that if the applicant/appellant does not return to India within the time so granted by this Court, the said personal surety bonds shall



be forfeited and Look-Out Circular (LOC) shall be issued in respect of applicant/appellant's wife, two sons and one daughter.

23. The Prosecution is directed to release the passport of the applicant/appellant within two days. The applicant/appellant shall get the ticket booked to Chicago, U.S.A. within one week thereafter.

24. Since, the applicant/appellant is an American citizen and is holding American passport, he is directed to apply for VISA for his return to India. Thereafter, he shall submit the itinerary of his visit to Chicago, U.S.A. along with his address and phone number to the concerned Police Station/Investigating Agency through learned Additional Public Prosecutor appearing in the present application.

25. The present application is disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 26, 2023

S.Sharma