

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3286 of 2022

Applicant :- Mohd.Rafiq And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Vijay Vikram Singh, Ambuj Singh, Nandini Verma, Surabhi Rawat

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The applicants seeks enlargement the on bail in FIR No. 007 of 2021 under Section 120-B read with Section 419, 420 I.P.C. and Section 14 of the Foreigners Act, Police Station-ATS Gomti Nagar, District - Lucknow.

3. It is submitted by the learned counsel for the applicants that the applicants were arrested on 17.6.2021 basically on the charge that the applicant was stayed in India without any authorization in his favour, it was a ground raised by the learned counsel for the applicant that he was having UNHCR card in his favour and in presence of the same he was living in India, thus no offence under Section 14 of the Foreigners Act, is made out. He lastly argues that the applicant is in jail since 17.6.2021.

4. In the light of the aforesaid this Court had passed the following order dated 24.11.2023, which is quoted hereinbelow:-

"1. Sri Vijay Vikram Singh, learned counsel for the applicants and Sri Shiv Nath Tilhari, learned A.G.A. for the State are present.

2. One of the contentions raised by the applicant is that he held valid refugee card when he was arrested on 17.06.2021 (as is revealed from paper no. 23 annexed with the counter affidavit dated 11.05.2022).

3. Learned A.G.A. submits that even if the applicant is found to be entitled for bail and is granted bail, he cannot stay in India unless some valid papers for staying within the borders of India are available with him. In case he is allowed to roam free, after coming out of jail he runs the risk of arrest again as he may have no papers to validate his stay on the soil of India.

4. Admittedly chargesheet has been filed under Sections 419, 420 and 120 I.P.C. and Section 14 of Foreigners Act and the accused has to face trial.

5. In view of the contentions of the State, it is observed that in case the applicant is granted bail, he has definitely not to leave the borders of India before the trial against him concludes. This raises a pertinent issue.

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The applicant, who is not citizen of India, cannot roam-free without any valid papers with him.

6. Learned A.G.A. seeks time to enlighten this Court on this issue.

7. List on 06.12.2023 in top ten cases."

5. In response to the said order, instructions have been handed over by the learned A.G.A. indicating the restrictions , which are required for the residing in a place under Section 3(2) (e) of the Foreigners Act. In the present case, the applicant claims the status of refugee and is staying in India allegedly based upon the recognition of the applicant as a refugee and the UN refugee card issued in his favour to that effect. The right of the refugee cannot be regulated by virtue of the guidelines dated 3.4.2023 handed over by the learned A.G.A.

6. Considering the arguments raised at bar that the applicant was staying in India on the basis of the status of refugee, which is duly fortified by the card issued in his favour by the UN Refugee Agencies and coupled with the fact that the applicant is in jail since 17.6.2021 and there is no likelihood of the trial being concluded in near future, the applicant is enlarged on bail. Accordingly, the bail application is allowed.

7. Let the applicants **Mohd.Rafiq And Amin** be released on bail in the abovesaid first information report number on their furnishing personal bonds and two solvent sureties of Rs.35,000/- each to the satisfaction of the court concerned with the following conditions:

(a) The applicants shall execute a bond to undertake to attend the hearings;

(b) The applicants shall not commit any offence similar to the offences of which they are accused or suspected of the commission; and

(c) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.²

Order Date :- 21.5.2024

Anuj Singh