

Court No. - 12

Case :- CRIMINAL APPEAL No. - 1102 of 2025

Appellant :- Jahid

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko

Counsel for Appellant :- Nripendra Mishra

Counsel for Respondent :- G.A.

Hon'ble Alok Mathur,J.

Crl. Misc. Application No. I.A./2/2025- Short Term Bail Application.

1. Heard Shri Nripendra Mishra, learned counsel for the appellant as well as learned AGA for the State and perused the record.
2. The applicant/ appellant has pressed this short term bail application to Haj Yatra, for the period of 30.4.2025 to 18.06.2025
3. In the bail application it has been submitted that prior to conviction the applicant/ appellant has applied for Haj along with his wife Smt. Kirmun Nisha and has deposited fee for this purpose on 17.10.2024 and -6.12.2024.
4. It is further submitted that the applicant has been selected to go Haj Yatra scheduled from 04.05.2025 to 16.06.2025.
5. It is further stated that the right of the appellant to travel for Haj is reserved in the Constitution of India and that he has been in jail since 26.3.2025 and for the aforesaid reason his short term bail for a period of 30.4.2025 to 18.6.2025 may be allowed.
6. In support of his submission he has relied upon the judgement in the case of ***Muneer Ahmad Vs. State of U.P. and another*** passed in Application under Section 482 No. 2874 of 2010 and also the judgment of Hon'ble Supreme Court in the case of ***Syed Abu Ala Vs. NCB***; 2024 SCC OnLine Del 1937, dated 20.03.2024.
7. Learned AGA on the other hand opposes the short term bail application of the appellant and has submitted that the appellant has been convicted for sentence of 10 years under Section 304/34 IPC and for six months under Section 323 IPC.
8. He further submits that the appellant is in jail in accordance

with law and it cannot be said that his incarceration is in violation of Article 21 of the Constitution of India. He submits that the court has convicted him and he is in prison in accordance with law clearly indicates that his rights and freedoms stand curtailed to the extent necessary for the purposes of completing sentence as per the order of the trial court regarding his conviction.

9. I have heard learned counsel for the parties and perused the record.

10. In the present appeal the appellant has assailed the order dated 26.3.2025 passed by IV- Additional Sessions Judge, Bahraich, whereby the appellant has been convicted for a period of 10 years under Section 304/34 IPC and for a period of six months under Section 323 IPC. He is in jail since 26.3.2025 and he has spent only one month of his sentence. Once a person has found to be guilty and sentenced in accordance with law, it is mandatory to carry out the entire sentence and can be released only after the expiry of the sentence or in terms of various Government Orders and Rules pertaining to early release on the basis of his good conduct and other factors. Short term bail and grant of parole though specifically not provided under the statute but has duly recognized various judgments of the Hon'ble Supreme Court as well as High Court and even exercise has been defined very clearly. To meet out certain exigencies and contingencies short term bail and parole are granted for the person, is suffering from some critical diseases for the purpose of treatment due to illness of the family, either there is no one except the convicted to look after such person. Such discretion is also exercised in case the marriage of a close relatives. In the present case the appellant seeks short term bail to perform his religious Haj Yatra. Undoubtedly there is no denying fact that it is a Haj obligation of Muslim faith, even significance to every person following such faith but on the other hand merely because application was submitted prior to his sentence and the same has been allowed cannot be a reason to grant short term bail to the appellant. It is noticed that he is a convict under Section 304/34 IPC along with Section 323 IPC with the charges which are very serious and is being sentenced for the period of 10 years. Once month has been passed incarceration.

11. Considering the judgement referred by the appellant of Hon'ble Supreme Court passed in the case of **Syed Abu Ala Vs. NCB** the sentence of the petitioner was for the period of 11 years six months, out of which the petitioner has spent 10 years 3 months in prison and accordingly even otherwise the appellant would be entitled to be a regular bail. Considering the

various Supreme Court Judgments, according to which either half or substantial period of sentence spent there is no likelihood to decide the appeal in near future the application for bail deserves to be allowed. Accordingly the case of the appellant herein is clearly justifiable. In the case of **Muneer Ahmad Vs. State of U.P. and another** the applicant therein was under trial for the offences under Sections 323, 504, 506 IPC and 3(1) (x) of the SC/ST Act and the court below considered the provisions of Article 21 of the Constitution of India that he is under trial allowed his application. In the present case the appellant has been sentenced for the offence under Sections 304/34 along with 323 IPC.

12. Accordingly it is mandatory to complete the entire sentence before being released.

13. I also take due consideration that the appellant would be at liberty to exercise his option for Haj after completing his sentence in accordance with law. Article 21 grants the person liberty to individual in accordance with law and it is injunction against the State not to deprive any one except in accordance with law. Incarceration subsequent to a conviction fairly amounts to curtail of the right to movement in accordance with provision of law and accordingly the same cannot be held to be arbitrary or illegal.

14. The likelihood of a prisoner absconding is one of the questions which a court has to ponder upon while deciding the bail application or fixing the sureties demands, as was held by Delhi High Court in Charles Sobhraj Vs. State:

"7.The principal purpose of bail being to ensure that the accused person will return for trial if he is released after arrest, this consideration is not lost sight of in the provisions of section 445 of the Code. It is only an enabling section, and provides that a Court or officer may permit a person to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing a bond except in cases where the bond is for good behaviour. Surely, we cannot and must not lose sight of the word "may" which indicates that accepting the deposit of money in lieu of surety is left to the discretion of the Court and that consequently the acceptance of deposit of money is not obligatory and the relief is to be granted only where the Court thinks fit to substitute a cash security. While considering the question of fitness, principal purpose of bail as underlined above, would always remain a paramount consideration. In short thus besides the question as to whether the accused can find sureties or not, the Court shall have to keep in mind the question as to whether the prisoner is likely to abscond or not and while meditating on the last question the Court may take into account various factors concerning him like the nature and circumstances of the offence charged, the weight of the evidence against him, length of his residence in the community, his family ties, employment, financial resources, character and mental condition, his record of convictions, reputation, character and

his records of appearance at Court proceedings or flight to avoid prosecution or failure to appear at Court proceedings."

15. The right to travel abroad has abroad has been recognize as an offshoot of right to life and personal liberty under Article 21 in the case of **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**. However, any right guaranteed under Article 21 is subject to procedure established by law. The same has been discussed in Maneka Gandhi (Supra) in the below mentioned paragraph as quoted below :

"171. The decisions of the Supreme Court wherein the right of person to travel abroad has been dealt with may be noticed. In Satwant Singh V. Assistant Passport Officer, Delhi [1967] 2 S.C.R. 525 the Court held that though a passport was not required for leaving, for practical purposes no one can leave or enter into India without a passport. Therefore, a passport is essential for leaving and entering India. The Court held the right to travel is part of personal liberty and a person could not be deprived of it except according to the procedure laid down by law. The view taken by the majority was that the expression "personal liberty" in Article 21 only excludes the ingredients of liberty enshrined in Article 19 of the Constitution and the expression 'personal liberty' would take in the right to travel abroad. This right to travel abroad is not absolute and is liable to be restricted according to the procedure established by law. The decision has made it clear that "personal liberty" is not one of the rights secured under Article 19 and, therefore, liable to be restricted by the legislature according to the procedure established by law. The right of an American citizen to travel is recognised. In Kent v. Dulles [357 U.S.16, (1958)], the Court observed that the right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. "The freedom of movement across the frontiers in either direction, and inside frontiers as well, as a part of our heritage, Travel abroad, like travel within the country. may be as close to the heart of the individual as the choice of what he eats or wears, or reads. Freedom of movement is basic in our scheme of values." In a subsequent decision-Zemel v. Rusk[381 U.S. (1) 14] the Court sustained against due process attacks the Government's refusal to issue passports for travel to Quba because the refusal was grounded on foreign policy considerations affecting all citizens. "The requirements of due process are a function not only of the extent of the governmental restriction imposed, but also of the extent of the necessity for the restriction." [The Constitution of the United States of America-Analysis and interpretation-at p. 1171]

173. The procedure established by law does not mean procedure, however, fantastic and oppressive or arbitrary which in truth and reality is no procedure at all (A. K. Gopalan v. State of Madras - observations of Mahajan, J.). There must be some procedure and at least it must confirm to the procedure established by law must be taken to mean as the ordinary and well established criminal procedure, that is to say, those settled usages and normal modes of proceedings, sanctioned by the Criminal Procedure Code which is a general law of Criminal procedure in the Country. But as it is accepted that procedure established by law refers to statute law and as the legislature is competent to change the procedure the procedure as envisaged in the criminal procedure cannot be insisted upon as the legislature can modify the procedure. The Supreme Court held in Kartar Singh's case [AIR 1961 SC 1787 : [1962] 2 S.C.R. 395 : (1961) 2 CRI LJ 853] that Regulation 236 Clause (b) of the U.P. Police Regulation

which authorises domiciliary visits when there was no law on such a regulation, violated Article 21."

16. In this case, the right to do Pilgrimage tour to Haj is not an absolute right but can be curtailed since the appellant has been imprisoned and granting bail on this point may increase the chances of him fleeing outside the clutches of law of this country. Such religious veneration can be duly exercised by him after serving his time in prison since there is no religious mandate to be complied with.

17. I do not find any urgency or any such situation which may necessitate the release of the appellant from custody to perform his Haj Yatra.

18. For the aforesaid reason, I do not find any merit in the short term application, the same is accordingly ***dismissed***.

19. List on 1.5.2025 in top 10 cases of the cause list.

(Alok Mathur,J.)

Order Date :- 28.4.2025

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