

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL WRIT PETITION NO. 3521 OF 2015**

|                             |     |             |
|-----------------------------|-----|-------------|
| Moosa Gulam Thakur          | ... | Petitioner  |
| vs.                         |     |             |
| CBI (BS & FC Mumbai) & Ors. | ... | Respondents |

Ms. Jamila Shaikh, Advocate, for the petitioner  
Mr. S.K. Shinde a/w Mr. Y.M. Nakhwa for respondent No.1  
Mr. Arfan Sait, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.**  
**DATE : 22nd September, 2015.**

**P.C.**

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein is an accused in Special Case No.27 of 2007. The petitioner was arrested on 5.6.2015 at Chhatrapati Shivaji Airport, Mumbai. It is submitted that the Passport of the petitioner was seized by the police on 5.6.2015 itself. The petitioner has been enlarged on bail in July, 2015.

3. The petitioner had filed an application for seeking return of the passport which was seized by the CBI. An application was filed before the

Special Judge seized with the matter. The CBI had opposed the grant of any favourable order in view of the fact that the petitioner was arrested only after he was declared as a proclaimed offender. The CBI had expressed the apprehension that there is every possibility of the petitioner fleeing away from justice. The learned Special Judge has rejected the application. Hence, this Writ Petition.

4. The learned counsel for the petitioner has placed implicit reliance upon a Judgment of the Hon'ble Apex Court in the case of **Suresh Nanda vs. Central Bureau of Investigation (2008) 3 SCC 674**. The Hon'ble Apex Court has set aside the order rejecting the application seeking return of the Passport. It is observed as follows :-

*“18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC state that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a “passport” is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9<sup>th</sup> Edn., p.133). This principle is expressed in the maxim generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing.*

**19.** *For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the*

*passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10-A of the Act for impounding the passport of the appellant in accordance with law.”*

5. The learned counsel appearing for CBI as well as the Passport Authority submits that the Passport Authority has the power to initiate action under Section 10-A of the Passports Act. In view of this, the learned counsel for the respondent No.3 has no objection to return the passport to the petitioner. However, the Passport Authority would still be empowered to initiate necessary action under Section 10A of the Passports Act.

6. In view of the aforesaid discussion, Respondent No.1 is directed to return the Passport to the petitioner within one week from the date of this order. The Petition is allowed in terms of prayer clause I and the petition stands disposed of.

7. The petitioner is at liberty to file appropriate proceedings if necessary. All contentions are kept open.

**(SMT.SADHANA S.JADHAV, J.)**

**CERTIFICATE**

Certified to be true and correct copy of the original signed order.