

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3708 OF 2015

Sundeep Prakash Bafna

.....Petitioner

V/s.

The State of Maharashtra

....Respondent

Mr. Meghashyam Kocharekar for Petitioner

Mrs. A.A. Mane APP for the State

Mr. S. S. Revale, P.I. D.C.B. C.I.D. Unit-5,

Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 27, 2015.

PC :

Heard.

2) Rule. Rule made returnable forthwith with the consent of parties.

3) Petitioner herein is accused in crime no. 79 of 2013 (Mahim Police Station crime no. 290 of 2013) and he has been charge-sheeted for offences punishable under section 288, 304, 308, 366, 338 r/w 34 of Indian Penal Code. Case is committed to the Court of Sessions and is registered as Sessions Case No. 916 of 2013 and is pending before Sessions Court, Greater Bombay. Petitioner herein had filed an application seeking pre-arrest bail. The said application was rejected by this Court (Coram: A. R. Joshi, J.). The non-

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bailable warrants were issued against present petitioner. Petitioner had challenged the issuance of non-bailable warrants as well as the proclamation issued against him by filing writ petition no. 975 of 2013. The said writ petition was placed before Hon'ble Division Bench of this Court. It was contended before the Hon'ble Division Bench that the petitioner desires to challenge the orders rejecting his anticipatory bail application before the Hon'ble Apex Court. In order to ensure that petitioner does not flee from the country, this Court had enquired about passport of the present petitioner. Petitioner had given an undertaking to this Court i.e. Hon'ble Division Bench that in the eventuality his application seeking pre-arrest bail is rejected by the Hon'ble Apex Court, he would make himself available to the Investigating Officer conducting the investigation in crime no. 79 of 2013, Crime Branch, Unit No. 5, Kurla. The undertaking was accepted by the Court. In the course of hearing of the said writ petition, Advocate representing the petitioner had tendered the passport bearing no. Z1892478 to the Investigating Officer who was present in the Court. The Hon'ble Division Bench was pleased to make it clear that an undertaking and handing over the passport is without any prejudice to the rights and contentions of the petitioner and in that eventuality

the undertaking was recorded and accepted by the Court. Petition was not heard on merits. The proclamation issued against present petitioner was not stayed. Petitioner was protected only to enable him to obtain necessary/appropriate orders from Hon'ble Apex Court. Liberty was given to the petitioner to surrender till 24/10/2013. Thereafter, the Hon'ble Apex Court had directed the petitioner to renew his prayer before Hon'ble High Court by keeping himself present before the High Court. The Hon'ble High Court was to hear the application under section 439 of Code of Criminal Procedure, 1973 holding that the petitioner is in deemed custody of the Court. Thereafter, 4.1679 petitioner was enlarged on bail by this Court (Coram: A. R. Joshi, J.) vide order dated 07/05/2015. There was no condition imposed upon the applicant to surrender his passport, however, in the course of hearing of writ petition 975 of 2013, since the petitioner, only in order to show his bonafides, surrendered the passport to the Investigating Officer, it remained with the investigating agency since then.

4) Petitioner was directed to attend the concerned police station on every Monday between 10.00 a.m. to 12.00 noon, while granting bail. Petitioner had filed an application seeking modification of the said condition on the ground

that the case is already committed to the Court of Sessions. This Court (Coram: Smt. Sadhana S. Jadhav, J.) vide order dated 24/07/2015 was pleased to modify the condition and the petitioner was directed to attend the concerned police station as and when called.

5) Petitioner had then filed an application before Sessions Court seeking return of passport deposited by him with the Investigating Officer on the day of order of Hon'ble High Court dated 14/10/2013. The said application was opposed by the investigating agency. Learned Sessions Court had considered the case on merits. Application was rejected on two counts, firstly that the original accused numbers 1 to 3, 7 & 8 were absconding and their bail applications were pending before the Court. They need to be charge-sheeted. It was also contended by the investigating agency that further investigation under section 173 (8) of Code of Criminal Procedure, 1973 is in progress and therefore, the passport should not be returned. Investigating agency had expressed the apprehension that in the eventuality the passport is returned, the petitioner would travel to some foreign country and would not be available for enquiry and investigation under section 173 (8) of Code of Criminal Procedure, 1973. Hence, this writ petition.

6) It is a matter of record that no court had directed the petitioner to hand over the passport to the investigating agency. It was neither the condition precedent for grant of bail. Petitioner had handed over the said passport to the investigating agency only to substantiate his bonafides that he would be co-operating with the investigating agency. That the case is committed to the Court of Sessions. Learned counsel for the petitioner, upon instructions submits that petitioner has only one passport. Learned counsel for the petitioner submits that petitioner would attend each and every date in the Sessions Court.

7) In view of this, petition deserves to be allowed by imposing certain conditions.

ORDER

- (i) Writ petition is allowed.
- (ii) Investigating agency shall return the passport to the petitioner after recording a detailed panchanama to that effect.
- (iii) Petitioner shall give an undertaking to the investigating agency that he will not misuse the passport. He shall further give an undertaking that whenever he wants to travel outside India, he would

give an intimation to the Investigating Officer along with his itinerary and the details of his journey. The same intimation shall be given even after return to India.

(iv) An intimation shall also be given to Sessions Court before whom the trial is pending.

(v) Petitioner shall also give an undertaking that he will remain present before the Sessions Court on every scheduled date.

(vi) Rule is made absolute in the above terms.

(vii) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)