IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) 490 OF 2018
(Balbirsingh s/o Balwantsingh Multani..vs..State, thr PSO, Pachpaoli Police Station, Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. *Court's or Judge's orders.*

Mr. R.K. Tiwari, counsel for applicant.
Mr. V.A. Thakre, APP for non-applicant.

CORAM: ROHIT B. DEO, J.

DATE OF RESERVING THE ORDER:6.7.2018

DATE OF PRONOUNCING THE ORDER:27.7.2018

Heard.

2 The applicant, who is arrested in connection with Crime 21 of 2018 registered with Pachpaoli Police Station, Nagpur for offence punishable under sections 420, 465, 467, 468, 471, 474,371 read with section 34 of the Indian Penal Code and section 12 of Indian Passport Act and is in detention since 23.1.2018 is seeking enlargement on bail.

3 ***The gist of the prosecution case***:

Mr. Aaron Lindop, Secretary (Immigration) of British Deputy High Commission, New Delhi wrote to Deputy Commissioner of Police (Crime), Nagpur conveying that the British High Commission has become aware of an attempt to facilitate minors to the United Kingdom. The communication names members of the Gujjar, Multani, Atwal and Ghotra families as suspected of providing counterfeit and forged documents to the British High Commission, New Delhi and to the British Deputy High Commission, Mumbai and of obtaining genuinely issued Indian Passports by fraudulent means.

4 Preliminary inquiry pursuant to the information received from the British High Commission led to Police Inspector Shri B.D. Dhere lodging First Information Report on 22.1.2018 with the Pachpaoli Police Station for offence punishable under sections 420, 465, 467, 468, 471, 474,371 read with section 34 of the Indian Penal Code and section 12 of Indian Passport Act. The applicant was one of the ten persons implicated in the First Information Report and was arrested on 23.1.2018. Concededly, the investigation is complete and the charge sheet is filed. In so far as the applicant is concerned, the case of the prosecution is that he facilitated three minors to enter United Kingdom inter-alia by obtaining genuine passports by furnishing incorrect information and / or fraudulent documents. The case of the prosecution is that the applicant facilitated the entry in United Kingdom of Ramandip Singh, Gurmel Singh and Babandip Singh by falsely representing himself as their father. According to the prosecution, the applicant did not stop at obtaining Indian Passports by furnishing incorrect information and / or fraudulent documents, he accompanied Ramandip Singh, Gurmel Singh and Babandip Singh to United Kingdom.

5 ***The rival submissions***: Shri R.K. Tiwari, the learned counsel for the applicant would submit that even if the case of the prosecution is taken at face value, offence under section 467, 471 and 371 of the Indian Penal Code are not made out. The submission is, that if sections 467, 471 and 371 of the Indian penal Code are kept out of the consideration, the maximum imprisonment with which the applicant may be visited is 7 years, and having spent more than six months in detention, further incarceration would be nothing short of a pretrial punishment.

Section 467 of the Indian Penal Code reads thus:

> *"467. **Forgery of valuable security, will, etc.**— Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".*

Shri R.K. Tiwari, the learned counsel relying, inter-alia on a decision of the Apex Court in ***Bhausaheb Kalu patil..vs.. State of Maharashtra, 1980, CRI.L.J. 1312***, would urge that passport is not a valuable security within the meaning of section 30 and section 467 of the Indian Penal Code, and as a corollary section 471 of Indian Penal Code would not be attracted. In ***Bhausaheb Kalu Patil Vs. State of Maharashtra***, the Hon'ble Apex Court held that the certificates which were forged to secure an admission in the Arts and Commerce College affiliated to Pune University would not be valuable security within the meaning of section 30 of the Indian Penal Code. Prima facie, the submission of the learned counsel Shri R.K. Tiwari that passport would not be a valuable security, appears to be inconsonance with the enunciation in ***Bhausaheb Kalu Patil Vs. State of Maharashtra***. The submission that Section 371 of the Indian Penal Code is not attracted is, prima facie, equally well founded. Section 371 of the Indian Penal Code reads thus:

> *"371. **Habitual dealing in slaves**.—Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with [imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine".*

It would be apposite to also note section 370 of the Indian Penal Code which reads thus:

> *"370. **Trafficking of person** – (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—*
> *First.-— using threats, or*
>
> *Secondly.— using force, or any other form of coercion, or*
>
> *Thirdly.— by abduction, or*

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation I—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

2. Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

3. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

4. Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

5. Where the offence involves the trafficking of more than one minor, it shall be punishable with

> *rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.*
>
> *6. If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*
>
> *7. When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*
>
> *(emphasis supplied)*

This submission of the learned counsel Shri R.K. Tiwari also merits serious consideration. No decisive finding needs to be recorded. However, it does appear to be extremely arguable whether, in the teeth of the accusations, the said Penal provisions are attracted.

6 Shri R.K. Tiwari, the learned counsel then contends, that assuming that the accusation against the accused are serious, the denial of bail would fall foul of Article 21 of the Constitution of India. Shri R.K. Tiwari, the learned counsel would submit that there is no reason to assume that the applicant will flee from justice or shall tamper with the evidence. Shri Tiwari, the learned counsel would emphasis that the normal rule is bail and not jail and it is judicially recognized that detention in custody is fraught

with grave consequences. The psychological and physical trauma apart, a jailed accused may possibly be hampered in defending himself in the best possible manner.

7 Shri R.K. Tiwari, the learned counsel would submit that the applicant, who is 65 years old and is keeping unwell, is a businessman who since last 12 years after the alleged incidents of 2006, has had no brush with the law. The submission is, that any further incarceration would be a pretrial punishment. Shri R. K. Tiwari would submit, that there is no reasonable probability of 65 year old successful businessman attempting to flee from the course of justice, and should the prosecution have such apprehension, stringent conditions may be imposed to allay the apprehension. The seriousness of the accusation is a relevant consideration, but then seriousness of the alleged offence is not the only consideration. The severity of the punishment, the likelihood of the accused fleeding from the course of justice, the possibility of the accused interfering in the trial by tampering with the evidence or otherwise are equally relevant considerations, is the submission. Shri R.K. Tiwari, the learned counsel would invite the attention of this Court to the observations of the Hon'ble Apex Court in ***Sanjay Chandra .vs. Central Bureau of Investigation, (2012)1 SCC 40*** which read thus:

> *"23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of*

disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

"24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibrating of the scales of justice."

"25. The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to the accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual".

"26. This Court, in Kalyan Chandra Sarkar Vs.

Rajesh Ranjan-observed that :(SCCP.52, para 18)

> *"18......"under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such [accused] on bail, where fact situations require it to do so.*

Final submission of Shri R.K. Tiwari, the learned counsel is that the material on record is too fragile to connect the applicant with the crime. The submission is that there is no material on record to show that the applicant accompanied either Ramandip Singh, Gurmel Singh and Babandip Singh to United Kingdom or that the applicant is in any way responsible for or instrumental in obtaining genuine Indian passport by furnishing incorrect information and / or fraudulent documents. Shri Tiwari, the learned counsel would submit that the fact that the passports which facilitated Ramandip Singh, Gurmel Singh and Babandip Singh to leave India and enter United Kingdom record the name of their father as Balbirsingh Balwantsingh Multani, even if prosecution version is accepted at face value, is not sufficiently cogent material to bring home the charge.

8 Shri V.A. Thakre, the learned APP, in rebuttal, vehemently opposes grant of bail. The learned APP would submit that the accusations are extremely serious and there is more than ample material on record to connect the applicant with the crime. The learned APP Shri V.A. Thakre, invites my attention to the 161 statement of Avtarsingh, the father of Babandipsingh who claims to have given Rs. 5 lacs to co-accused Amjitsingh Lubhana, and who further states that the applicant appeared for the VISA interview and accompanied Babandipsingh to London, at the instance of Amarjitsingh. Shri V.A. Thakre, the learned APP would submit that there is material on record to show that the passports were dispatched on the address of the applicant, which per se is sufficient material to link the applicant with the crime.

9 ***Consideration:*** This Court has given its anxious consideration to the rival submissions and the material on record. While deciding an application for bail, minute evaluation of the material on record and the merits and demerits of the prosecution and the defence is ordinarily not expected. However, reasons must be spelt out, at least briefly, for grant or rejection of bail. Without intending to express any definite or decisive opinion on the submissions of law and the merits and demerits of the case of the prosecution and the defence, this Court proposes to briefly indicate the reasons for reaching the ultimate conclusion that

the application for bail deserves to be allowed.

i) The incidents occurred in 2006. The applicant who is aged 65 years and is a successful businessman is living the life of law abiding citizen since last 12 years.

ii) Prima facie, the submission that even if the charge sheet is taken at face value, the offences which may be made out attract maximum imprisonment of seven years, is well merited.

iii) No material is brought to the notice of this Court which would suggest that the applicant shall not be available to face the trial or that the applicant may interfere with the trial or tamper with the evidence.

iv) The applicant is in detention since more than six months. Further detention is not warranted and would be akin to pre-trial punishment.

In order to keep record straight, it was strenuously urged by Shri R.K. Tiwari, the learned counsel that the material on record is woefully inadequate to bring home the charge. However, this Court has consciously refrained from minutely evaluating the material on record and from making any decisive or emphatic observation on the merits or demerits of the prosecution case.

10 The application is allowed.

11 The applicant be released from custody subject to the following conditions:

i) The applicant shall furnish personal bond of Rs. 5 lacs and two solvent sureties of like amount.

ii) The applicant shall deposit his passport with Pachpaoli Police Station, Nagpur and the same shall not be released till the conclusion of the trial, unless directed by this Court.

iii) The applicant shall scrupulously attend every date of hearing and shall cooperate in expeditious disposal of the trial.

iv) The applicant shall not tamper with evidence.

v) The applicant shall not attempt to directly or indirectly influence the witnesses.

JUDGE

RSB