

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.12330 OF 2018

ORDER:

This Criminal Petition, under Section 439 (1) (b) of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioner - accused No.1 seeking for relaxation of condition imposed in CrI.M.P. No.1601 of 2013 in Cr.No.33 of 2009 of P.S. CCS, DD, Hyderabad by the learned Special Judge for Economic Offences - cum - VIII Additional Metropolitan Sessions Judge, Hyderabad, to surrender his passport while granting anticipatory bail on 16.05.2013 and also the condition imposed in CrI.M.P. No.2932 of 2018 in CrI.M.P. No.1601 of 2013 on 04.10.2018 to deposit a sum of Rs.2,00,000/- by way of FDR towards security for return of his passport as interim custody.

2. The learned counsel for the petitioner submits that the petitioner is a civil contractor by profession and doing business of iron ore in and around South India, and that his passport has been expired on 23.06.2018 and it requires for renewal. He also placed reliance on a decision of Hon'ble Supreme Court in **Suresh Nanda v. Central Bureau of Investigation**¹, in support of his contention that the Court cannot direct the petitioner to deposit the passport at all.

3. Perused the aforesaid decision, wherein the Apex Court held in paragraph Nos.13 to 18 thus:

¹. (2008) 3 SCC 674

“13. Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the Cr.P.C. which states:

“102. *Power of police officer to seize certain property:-* (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.”

14. In our opinion, while the police may have the power to seize a passport under Section 102(1) Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.

15. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law of Lexicon by P. Ramanatha Aiyar (2nd Edition), the word impound has been defined to mean,

“to take possession of a document or thing for being held in custody in accordance with law.”

Thus, the word impounding really means retention of possession of a good or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act.

Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide *State of Orissa Vs. Binapani Dei* [Air 1967 SC 1269].

17. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states 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 a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. 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* (9th Edition pg. 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 Cr.P.C. though it can impound any other document or thing.”

4. Hence, in view of the above, when the Court does not have power to seize the passport, the very direction given by the learned Special Judge to surrender the passport itself would turn to be bad, more so, the order directing the petitioner to deposit huge amount by way of fixed deposit for turn of passport.

5. Accordingly, the present Criminal Petition is allowed, and the condition to surrender the passport by the petitioner as imposed in the order, dated 16.05.2013, passed in Crl.M.P. No.1601 of 2013 in Cr.No.33 of 2009 of P.S. CCS, DD, Hyderabad, by the learned Special Judge, and also the condition to the extent of depositing a sum of Rs.2,00,000/- by way of FDR towards security for return of his passport imposed in Crl.M.P. No.2932 of 2018 in Crl.M.P. No.1601 of 2013 on 04.10.2018, are hereby relaxed.

As a sequel, the miscellaneous petitions, if any pending, in the Criminal Petition, shall stand closed.

T. RAJANI, J

November 26, 2018.
Mgr