

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO.137 OF 2019.

Mr. Santosh Desai,
43 years of age,
Son of Laximan Desai,
Resident of H. No.1110,
Gokulwadi, Sankhalim,
Bicholim Goa.

.... Petitioner.

Vs.

State of Goa,
Through Bicholim
Police Station
Bicholim Goa.

.... Respondent.

Shri A. D. Bhobe, Advocate for the petitioner.

Shri P. Faldessai, Additional Public Prosecutor for the respondent.

Coram:- PRITHVIRAJ K. CHAVAN,J.

Date:-10th June, 2019.

ORAL JUDGMENT:-

Rule. Rule made returnable forthwith. The learned Additional Public Prosecutor waives service on behalf of the respondent.

2. Heard with the consent of the learned Counsel for the petitioner and the respondent.

3. An extra ordinary jurisdiction of this Court has been invoked by the petitioner impugning an order passed by the learned Judicial Magistrate, First Class, Bicholim (for short "JMFC") on 14.5.2019 by which the prayer of the petitioner for issuing a passport for a period of 10 years came to be rejected.

4. The petitioner is facing a prosecution in the Court of JMFC, Bicholim for the offence punishable under Sections 279, 338 of IPC on account of driving his car in a rash and negligent manner and causing injury to the complainant Kashinath Durgappa Nagralholi on 19.2.2017.

5. The petitioner possesses a passport bearing no.S53763 84. The petitioner had applied for issuance of afresh passport as his earlier passport was damaged. The petitioner, therefore, moved an application on 2.11.2018 before the learned JMFC for issuance of afresh passport. The learned JMFC by order dated 3.11.2018 allowed the application in Criminal Case No.IPC/42/2017/C, however, the learned JMFC granted no objection to the passport Authority for issuance of afresh passport only for a period of one year, *inter alia*, granting permission to the petitioner to travel abroad for a period of one year. Pursuant to the said order passport Authority issued passport having validity for one year w.e.f. 26.11.2018 to 25.11.2019

to the petitioner.

6. It is the contention of the petitioner that in view of the nature of his job, he is required to travel frequently to the Gulf country for his company's project work. The petitioner, therefore, applied for grant of extension/No objection to the Magistrate for renewing the validity of his passport upto 10 years.

7. The learned Magistrate however, rejected the prayer and therefore, the petitioner has approached this Court under Article 227 of the Constitution of India read with Section 482 of Cr.P.C.

8. Shri Bhobe, learned Counsel appearing for the petitioner drew my attention to the order passed by the learned Magistrate on 3.11.2018 and the impugned order dated 14.5.2019. It is submitted that the petitioner is required to undergo medical examination for minimum period of seven months and twenty one days failing which he would not be in a position to travel abroad. If the petitioner had to undergo medical examination for the aforesaid period, then what remains is only a period of three months to travel abroad and, therefore, no fruitful purpose would be served in granting passport having validity of one year. Merely because the respondent contention that the petitioner would not be available for the trial and

would run away from the country would not in itself is sufficient to refuse the permission to the petitioner to go abroad for a period of more than one year in the light of the fact that the chargesheet in question appears to have been filed on 21.4.2017 in the Court of JMFC,Bicholim.

9. It appears that the learned Magistrate in her order dated 3.11.2018 failed to appreciate the ratio laid down by this Court in the case of ***Deepak Dwarkasingh Chhabria Vs Union of India, AIR 1997 Bom 181***. A Single Judge of this Court observed and I quote paragraphs 8 and 9 of the said judgment which read thus:-

- “8. Now I shall refer to certain notifications issued by the Central Government under Section 22(a) of the Act which were brought to the notice of this Court by the learned counsel for the passport authority during arguments. It seems that after the Supreme Court judgment of Maneka Gandhi's case, the Central Government in exercise of the powers conferred by clause (a) of Section 22 of the said Act, issued a notification dated 16th August, 1979 exempting citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before any criminal Court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of the clause (f) of sub-section (2) of Section 6 of the Act, subject to the following conditions, namely.
- (a) the passport to be issued to every such citizen shall be issued.
 - (i) where the order of the Court referred to above, gives such permission for a period not exceeding three months, for a period of three months and an observation will be made on the passport that the holder may travel abroad for a period not exceeding

- that specified in such order; or
 - (ii) if no period is specified in such order, the passport shall be issued for a period for six months and may be renewed for a further period of six months, if the order of the Court is not cancelled or modified; or
 - (iii) in any other case, for the period for which such permission is given by such order;
 - (b) the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it any time during the continuance in force of the passport so issued.
9. By the notification dated 25th August, 1993, the earlier notification was substituted granting exemption to the citizens against whom proceedings in respect of an offence alleged to have been committed by them are pending before a Criminal Court in India and who produce order from the Court concerned permitted them to depart from India, from the operation of the provisions of clause (f) of sub-section (2) of Section 6 the said Act, subject to following conditions, namely,
- (a) the passport to be issued to every such citizen shall be issued;
 - (i) for the period specified in order of the Court referred to above, if the Court specifies a period for which the passport has to be issued; or
 - (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;
 - (iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or
 - (iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.
 - (b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;
 - (c) the passport issued in terms of (a)(i) above can be

- fresh, order specifying a further period of validity of the passport or specifying a period for travel abroad;
- (d) the said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued."

10. The Court has a discretion in view of the facts and circumstances of each case pending before it to specify the period during which a citizen can be permitted to travel abroad after renewal of his or her passport.

11. Learned Magistrate misread the ratio laid down by this Court vis-a-vis the facts of the instant case.

12. The learned Additional Public Prosecutor has fairly submitted that the ratio laid down by this Court in the case of **Deepak Dwarkasingh Chhabria**(supra) would be applicable to the facts of the present case.

13. Having considered the respective submissions at the bar and after going through the impugned orders, I am of the view that the petitioner would be entitled to travel abroad(Oman) atleast for a period of five years in view of the nature of his employment with Sureflo Techcon Pvt. Ltd. and also in view of the fact that in order to

do the extension of validity of the passport the petitioner is required to undergo medical examination for which minimum period of seven months and twenty one days are required.

14. The impugned orders therefore, need to be quashed and set aside. Hence I pass the following:-

O R D E R

- i. The petition is allowed. The impugned orders dated 3.11.2018 and 14.5.2019 are hereby quashed and set aside.
- ii. The petitioner is permitted to travel abroad for a period of five years.
- iii. No objection is granted to the passport Authority to issue afresh passport/renew the passport of the petitioner for a period of five years from 13.5.2019.
- iv. The petitioner shall furnish his permanent local address as well as his address in the foreign country which he would be visiting alongwith his email ID to the trial Court.
- v. The petitioner shall made himself available during the trial unless the Court exempts his personal appearance.
- vi. The petitioner shall inform the trial Court the

program of his travel to the foreign country well in advance and specify the date of his return.

- vii. The petitioner shall also furnish his mobile phone number, if any, to the trial Court.

15. Rule is made absolute. Petition stands disposed of in the aforesaid terms with no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

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