

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.356 OF 2014

IN

CRIMINAL APPLICATION NO.809 OF 2010

Munir Mohamed Ahmed Khan, Age 64 years,
Occ.Business, R/o.1403/1404, A Wing,
Raj Classic, Off.Yari Road, Versova,
Andheri West, Mumbai-400 061.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vikram Ramkishan Sutaria for applicant.

Ms.Jyoti Lohakare, APP, for State.

Ms.Kalpna Y. Gaekar, Senior Police Inspector, BKC Police Station,
Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th Jule 2019

PC :

1. This application has been assigned to me for hearing and disposal in view of the directions obtained from the Hon'ble the Chief Justice.

2. The applicant seeks directions to the investigating officer of CR No.132 of 2009 registered with Versova Police Station, Mumbai to hand over his passport.

3. Some relevant facts which are necessary to adjudicate this application are as follows :-

(a) The applicant is arraigned as an accused in CR No.132 of 2009 registered with Versova Police Station for offences

punishable under Sections 328, 274, 275, 276, 406, 465, 467, 468, 471 and 420 of Indian Penal Code and Sections 33 and 36 of Maharashtra Medical Practitioners Act, 1961;

(b) The applicant had preferred application for grant of anticipatory bail viz Criminal Application No.809 of 2010. The said application was rejected by this Court by order dated 20th April 2010. While rejecting the application submission advanced at the instance of applicant was recorded that the applicant was on interim anticipatory bail and he may be given some time to surrender. This Court directed that the applicant may not be arrested till 26th April 2010;

(c) The applicant thereafter moved the application for extension of time to surrender. It was contended that the applicant had preferred SLP before the Apex Court which is expected to come up for hearing shortly. This Court by order dated 27th April 2010 observed that the investigating officer is present in Court and the passport of the applicant was handed over to the investigating officer in the Court. In view of this time to surrender was extended up to 3rd May 2010. It was further observed that no further relief will be granted by this Court and time was extended on the condition that the applicant will not leave country till 3rd May 2010;

(d) The passport of the applicant bearing No.H-1375704 is in the custody with the investigating officer since then;

(e) The investigation was completed and charge sheet was filed before the concerned Court and the proceedings were numbered as CC No.1521/PW/2010.

4. Learned advocate for applicant submitted that the passport of the applicant is in custody of investigating officer from 27th April 2010. It is submitted that the applicant was subsequently arrested and granted bail. The investigation is completed and charge sheet is filed. The passport was handed over to the investigating officer in the Court during the course of hearing of application for extension of time to surrender as and by way of security till he surrenders himself to the investigating officer. The investigating officer cannot retain the passport as there is no condition to deposit the passport as a pre-condition for grant of bail.

5. The investigating officer has filed an affidavit opposing grant of relief of return of passport to the applicant. Learned APP submitted that the applicant is involved in serious offences. The investigation is completed and charge sheet is filed against applicant. The proceedings are pending in the concerned Court. The applicant is involved in five other similar cases. On instructions it is submitted that all the cases are clubbed together. It is further submitted that information was received by Police that applicant had two passports. One of them was obtained in the year 1999 and the term of said passport had expired on 7th July 2008. CR No.18 of 2008 was registered against applicant. The applicant thereafter deliberately obtained new passport on 18th November 2008 by furnishing false information regarding his occupation that he is a Naturopathy Doctor and professional medical doctor and suppressed the fact that offences were registered against him. It is, therefore, prayed that the application be rejected.

6. It is apparent that the applicant is granted bail in all the cases. The affidavit-in-reply also indicate that the charge sheet had been submitted in the respective Court. It is not disputed that while granting bail in any cases registered against the applicant, as stated above, the Court had not imposed a pre-condition that passport shall be deposited with the investigating officer during pendency of the proceedings. It is pertinent to note that the application for anticipatory bail preferred by the applicant before this Court in connection with CR No.132 of 2009 was rejected and the applicant was granted time to surrender till 26th April 2010. The applicant thereafter sought extension of time to surrender and extension was granted till 3rd May 2010 with a condition that applicant shall not leave the country till 3rd May 2010. The passport was handed over to the investigating officer in the Court, while the applicant sought extension of time to surrender on 27th April 2010. The police machinery had not initiated any proceedings under the Passport Act nor any action is initiated on the basis of alleged false information adduced by the applicant while obtaining the passport.

7. Learned counsel for applicant relied upon the decision of this Court delivered in the case of **Jignesh Shah Vs. CBI** (2018-SCC Online-Bom-1166). In the aforesaid decision the passport was seized during the course of investigation by CBI. The accused therein was granted bail with a condition that he shall not leave India without permission of Court as well as CBI. The passport was allegedly seized u/s 102 of Cr.P.C. It was observed that the power of impounding are vested with passport authority. The Court while deciding the aforesaid application relied upon decision in the case of

Suresh Nanda Vs. CBI. In the case of Suresh Nanda the passport was seized pursuant to the registration of FIR. It was observed by the Court that the Passport Act is a special Act relating to a matter of passport, whereas Section 104 of Cr.P.C is a general provision for impounding any document or thing produced before it. It was also observed that by necessary implication the power of Court to impound any document or thing produced before it would exclude the passport. In the present case, the passport was neither seized u/s 102 of Cr.P.C nor impounded under the provisions of Passports Act. There is no direction to deposit the passport as a condition for granting bail. In the circumstances, the passport cannot be retained by the investigating officer for indefinite period. Hence, the application deserves to be allowed.

8. Hence, I pass following order :

ORDER

- (i) Criminal Application No.356 of 2014 is allowed;
- (ii) The investigating officer in CR No.132 of 2009 of Versova Police Station, which is subject matter of CC No. 1521/PW/2010, is directed to hand over passport to the applicant;
- (iii) It will be open to the concerned authorities to initiate appropriate proceedings under the provisions of Passports Act against applicant or any other provisions of law, without being influenced by observations made in this order.

(PRAKASH D. NAIK, J.)