

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2723 OF 2019

Ms. Chandbibi Zaidi,	]	
2 nd Floor, Kennedy House,	]	
Goregaonkar Road, Nana Chowk,	]	
Mumbai – 400 007.	]	...PETITIONER

VERSUS

The State of Maharashtra	]	
Through Public Prosecutor,	]	
High Court, Bombay.	]	...RESPONDENT

Mr. Arshad Shaikh i/by Mr. Mohan Khatavkar for the Petitioner.
Mr. A.R. Patil, APP for Respondent – State.

CORAM	: <u>S.S. SHINDE, J.</u>
RESERVED ON	: 26 th SEPTEMBER 2019
PRONOUNCED ON	: 16 th OCTOBER 2019

JUDGMENT

1. Rule. Rule made returnable forthwith. With the consent of the parties Petition is heard and disposed of finally, at the stage of admission.

2. This Writ Petition takes an exception to the impugned order dated 11.03.2019 passed by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai in Miscellaneous Application No. 82 of 2018 in C.C. No. 430/PW/2007.

3. Briefly stated, the facts that led the Petitioner to file the present Petition are as follows:

Petitioner is the Managing Trustee of the Trust duly registered under the provisions of Bombay Public Trust Act, 1950, namely Free Trade Unions Multipurpose Projects Trust. The Trust is engaged, inter alia in providing services to the members – workmen of affiliated Trade Unions, namely Mumbai Mazdoor Sabha and Engineering Mazdoor Sabha, two Trade Unions duly registered under the Provisions of Trade Unions Act, 1926. The members of the aforesaid Trade Unions are employees employed with different companies, industrial units, Hospitals, Charitable Trusts, Solicitor firms, commercial establishments, etc. spread all over Maharashtra and Goa. The unions have on their rolls of membership more than six thousand such employees employed in various establishments as mentioned herein above. The unions have been functioning since the past more than six decades. Petitioner was duly elected as Managing Trustee of the aforesaid Trust and Presidents of the aforesaid Union on 22nd July 2003 after the demise of erstwhile President and Managing Trustee of the aforesaid Trade Unions and the aforesaid Trust respectively.

4. It is the case of the Petitioner that, somewhere on or about 08.11.2011 the Petitioner received a Notice dated 08.11.2011 from the

Regional Passport Authority alleging therein that the Petitioner has suppressed certain information whilst seeking renewal of her passport in 2010, more particularly information regarding pendency of criminal cases against the Petitioner. That, the Petitioner submitted her reply dated 18.11.2011 to the aforesaid show cause notice dated 08.11.2011 wherein she explained the circumstances under which application for renewal was submitted. The Petitioner also explained the harassment which the Petitioner is being subjected to by the family members of deceased R.J. Mehta. The Petitioner also met the concerned officials of the Regional Passport Authority before whom the matter was pending and explained the entire matter. The petitioner was accordingly asked to submit no objection certificates in compliance of the provisions under the Passport Act, 1967 from the appropriate Courts before whom the criminal matters were pending against the Petitioner. During the pendency of the aforesaid matter before the Regional Passport Authority several correspondences were exchanged between the Petitioner and the Regional Passport Authority.

5. It is further the case of the Petitioner that, in the meantime, Regional Passport Authority issued another letter dated 05.11.2011 directing the Petitioner to surrender her passport and further on 29.12.2011 once again asked her to surrender her passport. Petitioner in response to and in compliance thereof, addressed a letter dated 16.01.2012, and without

prejudice, surrendered her passport to the Regional Passport Authority. It is further submitted that the passport of the Petitioner remained in the custody of the Regional Passport Authority. It is further the case of the Petitioner that, the Petitioner's passport was impounded by the Regional Passport Authority by its order dated 23.04.2013.

6. Being aggrieved by the aforesaid impugned order dated 23.04.2013 the petitioner filed an Appeal under Section 11 of the Passports Act, 1967 before the Learned Appellate Authority, Ministry of External Affairs, New Delhi. The aforesaid appeal was decided by the learned Appellate Authority by its order dated 28.10.2013 thereby upholding the order of the Regional Passport Authority impounding the passport of the Petitioner.

7. It is further the case of the Petitioner that, during the intervening period from the year 2012 to 2016, 4-5 Petitions were filed by the Petitioner for bringing into fore the lethargy and lackadaisical attitude adopted by the Regional Passport Authority as well as to safeguard her rights vis-a-vis her passport. Several orders were passed in the aforesaid petitions issuing various directions. One of such Petitions was Writ Petition No. 723 of 2014 wherein their Lordships Hon'ble Mr. Justice S.C. Dharmadhikari and Hon'ble Mr. Justice G.S. Kulkarni were pleased to

dispose off the aforesaid Writ Petition by its order dated 01.07.2015 whereby their Lordships quashed and set aside the order passed by the learned Appellate Passport Authority, since the order passed by the learned Appellate Authority was a non-speaking and unreasoned order and further directed the said Appellate Authority to decide the appeal afresh. Consequently the learned Appellate Authority under the provisions of Section 11 of the Passports Act, 1967 restored the appeal and heard the Petitioner through her advocate. Thereafter the learned Appellate Authority once again upheld the order of impounding passed by the Regional Passport Authority by its order dated 05.02.2016. The learned Appellate Authority however granted liberty to the Petitioner to move fresh application before the concerned courts, where the criminal cases were pending, seeking NOC for restoration of passport facility, which she might submit to the passport officer for release of her impounded passport, in terms of provisions contained in GSR 570(E) dated 25.08.1993.

8. It is further the case of the Petitioner that, aforesaid directions stemmed from the Notification GSR 570(E) dated 25.08.1993 issued by the Ministry of External Affairs in exercise of powers conferred by clause (a) of Section 22 of the Passports Act, 1967. The said notification was issued in public interest. Thereafter Petitioner applied for NOC before the Learned Magistrate, 18th Court at Girgaon, Mumbai in the pending criminal matter,

viz, C.C. No. 430/PW/2007 by filing a requisite application on or about 17.02.2016 wherein the Petitioner also informed the learned Magistrate about the status of the order passed by the learned Appellate Authority. Respondent – State through APP herein recorded say on the application itself thereby opposing the grant of NOC to the Petitioner on a singular ground that since the passport was impounded by the Passport Authorities and not by order of the Court, this Court had no jurisdiction to give the direction sought on several grounds more specifically stated therein. The learned Magistrate, however, held that prima facie he did not have the powers to direct the passport authorities and relied on the order dated 19/11/2013 of this Court (Coram : M. L. Tahaliyani, J) passed in Writ Petition No. 1543 of 2013, not connected with the proceedings, to hold that he was not empowered to give NOC to the Petitioner. The learned Magistrate held that, at most the Court could relax bail condition if the conditional bail order has been passed and hence he did not have the jurisdiction.

9. Being aggrieved by the aforesaid order dated 26.12.2016 passed by the learned Magistrate in C.C. No. 430/PW/2007, Petitioner filed a Writ Petition being Criminal Writ Petition No. 841 of 2017 before the Hon'ble High Court. In the meantime, Petitioner also filed another Writ Petition, being Writ Petition No. 523 of 2017 before the Hon'ble Division

Bench of this Court challenging the rejection of her appeal by the Appellate Authority constituted under the Passports Act, 1967. It is stated that learned Single Judge of this Court (Coram : N.W. Sambre, J) passed an order dated 13.03.2018 wherein he directed the Criminal Writ Petition No. 841 of 2017 to be clubbed together with Writ Petition No. 526 of 2017. Accordingly, the aforesaid Petition was clubbed with the main Petition, being Writ Petition No. 526 of 2017. Both the aforesaid Writ Petitions were heard by the Division Bench of this Court (Coram : B.P. Dharmadhikari and S.V. Kotwal, JJ) on 18.12.2018 when they were finally disposed off by partly allowing both the Petitions and certain directions were issued to the learned Magistrate to consider and decide the applications as per law.

10. It is the case of the Petitioner that whilst deciding the aforesaid Writ Petition No.526 of 2017 and 841 of 2017, the Division Bench of this Court has clarified that the order dated 19/11/2013 in Writ Petition No.1543 of 2013 passed by a learned Single Judge of this Court (Coram : M.L. Tahaliyani, J) did not prohibit trial Court from considering the request made in terms of Notification issued by the Ministry of External Affairs, New Delhi on 25.08.1993.

11. In pursuance to the liberty granted to the Petitioner in the order dated 18th December 2018 by this Court, the Petitioner filed an application

dated 31.12.2018 before the learned Magistrate seeking NOC for restoration of her passport facility. Respondent No. 2 recorded its say on the application itself by taking the same stand as it had taken in earlier application, viz that the learned Magistrate's Court had no power to grant NOC. The matter was adjourned from time to time and finally on 11th March 2019 the learned Magistrate proceeded to pass an ex-parte order thereby rejecting the application.

12. Being aggrieved by the impugned order dated 11.03.2019 passed by the learned Magistrate in Miscellaneous Application No. 82 of 2018 in C.C. No. 430/PW/2007, Petitioner has filed this Petition.

13. Learned counsel appearing for the Petitioner submits that, learned Magistrate has completely ignored the judgment and order dated 18.12.2018 passed by the Hon'ble Division Bench of this Court in Writ Petition No. 526 of 2017 along with connected matter. That, the learned Magistrate has absolutely and completely ignored the facts and pleadings brought to its notice vide aforesaid application preferred by the Petitioner. Neither the pleadings nor submissions have even remotely been referred to in the said impugned order by the learned Magistrate nor have the submissions been dealt with. It is submitted that, the learned Magistrate has ex facie erred in rejecting the application filed by the petitioner once again

relying on the order passed in Criminal Writ Petition No. 1543 of 2013. The learned Magistrate ought to have appreciated that the said order dated 19/11/2013 passed by a learned Single Judge of this Court (Coram : M L Tahaliyani, J) was no longer binding in view of the clarification about the said order given by the Division bench in Writ Petition No.526 of 2017 and other connected matter.

14. It is further submitted that, the learned Magistrate has ex facie passed practically same order which was challenged by the Petitioner in Criminal Writ Petition No. 841 of 2017. The mechanical manner in which the impugned order has been passed can be seen from the fact that the impugned order is even less than 2 pages. There is absolutely no reproduction of either pleadings or documents relied upon by the Petitioner. That, the learned Magistrate has once again, delved into a frivolous ground of presence of the Petitioner, despite knowing that the trial in the matter before the learned Magistrate has been stayed by the Hon'ble High Court in Criminal Writ Petition No. 1505 of 2013. It is further submitted that, learned Magistrate has ex facie completely ignored the observations of the Hon'ble Division Bench of this Court in its judgment dated 18.12.2018 that the Notification dated 28.08.1993 issued by the Ministry of External Affairs deals with the powers of the Magistrate Courts to issue NOC, shirked away from his responsibility of carrying out his judicial duty, by merely stating

that the learned Magistrate has no power to issue any directions to the Passport Authority.

15. It is further submitted that, learned Magistrate has ex facie ignored the order dated 05.02.2016 passed by the Appellate Authority under the Passports Act, 1967 whereat it had granted liberty to the Petitioner for restoration of passport facility after getting NOC from the respective criminal courts where the criminal complaints are pending against the Petitioner. That even though the learned Magistrate was shown the entire judgment and order dated 18.12.2018 passed by the Hon'ble Division Bench of this Hon'ble Court, the same has not even been referred in the entire impugned order by the learned Magistrate. That, the entire impugned order is devoid of reasoning. There is absolutely no application of mind and the entire impugned order has been passed in an utterly mechanical manner. The learned Magistrate has even ignored the order passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier in C.C. No. 108/PW/2010 on an identical application preferred by the Petitioner whereat another Criminal Complaint is pending. The learned Additional Chief Metropolitan Magistrate has rightly applied the dictum of the Hon'ble Division Bench of this Court whilst granting the NOC to the Petitioner.

16. It is further submitted that, the finding of the learned Magistrate was, therefore, completely opposed to the mandatory provisions of Passports Act, 1967 which categorically provides for seeking NOC from the court by an individual against whom criminal case is pending. The factual position was brought to the notice of the learned Magistrate, who has chosen to ignore the same. Had the learned Magistrate applied his mind appropriately no doubt he would have come to the inevitable conclusion that the filing of the application, on which the impugned order has been passed, was indeed a formality and requirement under the provisions of Passports Act, 1967. It is further submitted that, the learned Magistrate has completely misdirected himself in assuming that the Petitioner has sought any direction to be issued to the Passport Authority or otherwise. In fact, the petitioner has only sought an NOC from the learned Magistrate which then would have been submitted to the Passport Authority and thereafter, the Passport Authority would have dealt with the same in accordance with law as was observed in the order dated 18.12.2018 passed by the Division Bench of this Court.

17. It is further submitted that, the learned Magistrate has also caused deliberate and intentional infringement of the fundamental right granted to the Petitioner under Articles 14 and 21 of the Constitution of India by not allowing the application of NOC preferred by the Petitioner.

That, the impugned order dated 26.12.2016 passed by the learned Magistrate is passed mechanically and without application of mind. It is also violative of principles of natural justice and thus arbitrary.

18. In support of the aforesaid contentions, learned counsel appearing for the Petitioner relied on the judgment of the Supreme Court in the case of Maneka Gandhi Vs. Union of India¹, Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India² and so also the judgments of this Court in the case of Deepak Dwarkasingh Chhabria Vs. Union of India³, Shyam Dwarkadas Chhabria Vs. The Regional Passport Office⁴. Therefore, learned counsel appearing for the Petitioner prays that Writ Petition may be allowed.

19. It is further submitted by the learned counsel for the Petitioner that the Petitioner sought “NO Objection Certificate” for the purpose of restoration of her passport, therefore, the trial court could have looked into the said application in the light of notification dated 25.08.1993 and as per the directions issued by the Division Bench of this Court by order dated 18/12/2018 and then passed the suitable order in terms thereof. He submits that Petitioners requires NOC from the Court of learned Magistrate

1 AIR 1978 SC 597

2 AIR 1967 SC 1836

3 AIR 1997 Bom 181

4 AIR 2003 Guj 108.

for restoration of passport facility as she intends to go to UAE for religious purpose i.e. for Umrha (Haj). He submitted that the original passport of the Petitioner has been impounded by the passport authority and is in the custody of the said authority. He lastly submits that the Writ Petition may be allowed.

20. On the contrary, the learned APP, relying upon the contentions raised by the original complainant, submits that the application of the Petitioner for restoration of her passport is not tenable in the eyes of law as the law does not permit the trial court to issue, reissue or restore the passport of any person. He further submits that the Court of the learned Magistrate has no jurisdiction to restore the passport of the Petitioner, and there is no provision in the Indian Penal Code where the passport of the accused can be restored at the direction of the Criminal Court. He invites attention of this Court to the notification dated 25/08/1993 and submits that it is clear from the notification of Ministry of External Affairs dated 25/08/1993 that the Court of learned Magistrate has power to permit accused before the said Court to depart from India, but there is no provision in the said notification which provide powers to the learned Magistrate for restoration of passport. He, therefore, submits that the restoration of passport is purely an administrative act of concerned department, and therefore, allowing the prayer of the Petitioner by the Court is nothing but

indirect judicial transgress into the administrative power of the passport authority. It is submitted that the Petitioner is a habitual offender and criminal cases are pending against her, and she flouted the conditions imposed on her at the time of granting bail. It is also submitted that the Petitioner is not cooperating to the Court for speedy trial. He further submits that if NOC is given to the Petitioner and passport is restored on the said NOC by the passport authority, the Petitioner will not be available in the Criminal Cases pending against her and there is a possibility of her absconding in future. The learned APP therefore submits that the Writ Petition may be rejected.

21. I have heard the learned counsel for the parties. With their able assistance, perused the pleadings and grounds taken in the Petition as also annexures thereto and the reasons assigned by the trial Court in the impugned order.

22. The issue involved in this Writ Petition for consideration revolves around the effect of refusal of issuance of No Objection Certificate by the Magistrate, as required by the passport authority for restoration of passport of the Petitioner. It appears from the perusal of the impugned order so also earlier order passed by the Magistrate that the Magistrate has failed to exercise jurisdiction vested in him, which gave rise for filing the Writ

Petitions by the Petitioner in the High Court. The judgment and order passed by the Division Bench of this Court (Coram : B.P. Dharmadhikari and S.V. Kotwal, JJ) in Writ Petition Nos. 526 of 2017 and 841 of 2017 makes it clear that the learned Magistrate has jurisdiction to consider the prayer of the Petitioner for granting No Objection Certificate. In spite of said judgment of the Division Bench of this Court dated 18/12/2018, the learned Magistrate by the impugned order once again held that he has no jurisdiction to entertain the application filed by the Petitioner praying therein to grant No Objection Certificate for restoration of her passport facility.

23. It appears from the pleadings and grounds taken in the Petition that the Petitioner is desirous to go to Haj pilgrimage and therefore, asserts her fundamental rights to travel abroad for said purpose. According to the petitioner, the present case has had a chequered history, and therefore, before dealing with the aforesaid contention of the Petitioner, it is necessary to revisit the facts of the present case. It is not in dispute that earlier on the application of Petitioner dated 12.04.2010 for grant of passport facilities, a passport bearing No. J-1609137 dated 03/05/2010 has been issued to the Petitioner by the passport authority. Thereafter the passport authority, on the basis of information given by the original complainant that four criminal cases are pending against the Petitioner, issued a notice dated 08.11.2011 to the Petitioner asking the Petitioner to appear before the said authority and

to show cause as to, why the passport office should not initiate action to impound her passport on the ground of suppression of material information relating the criminal cases pending against her in her passport application. It appears that the Petitioner vide letter dated 18.11.2011 tendered apology for the mistake, and stated that there was no malafide intention on her part, as the application for passport was made by her travel agent who, an inadvertently did not mention the facts of pending criminal cases against her. Thereafter the Passport officer, having found the Petitioner guilty of obtaining passport by suppressing the facts of pending criminal cases against her, directed the Petitioner to surrender her passport. However, the Petitioner vide her letter dated 20.12.2011 requested two weeks time to surrender the passport on the ground that her application for No Objection Certification was pending before the concerned court. The authority again vide notice dated 29.12.2011 asked the Petitioner to surrender her passport within seven days from said date. Thereafter, vide letter dated 16.01.2012 the Petitioner surrendered her passport. On the same day i.e. on 16.01.2012 the Petitioner submitted an application for issue of passport with restricted validity in terms of the provisions of GSR Notification No.570(E) dated 25.08.1993. It is required to be noted that considering the status of the criminal cases pending against the Petitioner, and that her application for grant of NOC from the concerned Court was pending, the authority did not impound/revoke the passport of Petitioner, and kept on hold her

passport application. It appears that as per new system of passport services under passport seva project, the authority closed the passport application of the Petitioner on 25.06.2012, however, opportunity was given to the Petitioner to submit a fresh application. However, the Petitioner filed Writ Petition No.2379 of 2012 before the High Court thereby seeking direction to the authority to issue formal order in pursuance of notice dated 08.11.2011. During pendency of the said Writ Petition, the learned Metropolitan Magistrate, Girgaon vide order dated 16.08.2012 rejected the Petitioner's application of issuance of NOC. The Division bench of this Court (Coram : Dr. D Y Chandrachud and R G Ketkar, JJ) by order dated 01.11.2012 disposed of Writ Petition No.2379 of 2012, and directed the authority to pass an appropriate order in the proceedings initiated at the instance of the complainant wherein the notice dated 08.11.2011 was issued to the Petitioner. In view of the said directions, the authority passed order dated 23.04.2013 thereby impounding the passport of the Petitioner.

24. It appears that against the said order dated 23.04.2013, the Petitioner preferred Appeal before the Chief Passport Office, who vide order dated 28.10.2013 upheld the decision of the passport officer with direction to place the name of the Petitioner on Prior Approval Category for a period of one year, and after expiry of the said period, she may submit a fresh application with direction/order of the court acquitting her from the

criminal cases pending against her.

The Petitioner challenged the said order of Chief Passport Office dated 28.10.2013 by filing Writ Petition No.723 of 2014 before the High Court. This Court vide order dated 01.07.2015 disposed of the said Writ Petition and restored the Appeal of the Petitioner thereby remanding the matter back to the Chief Passport Office for a de novo hearing on the Appeal filed by the Petitioner, and directed the authority to take a decision afresh on merits and in accordance with law, and pass a speaking order after hearing the Petitioner. Accordingly Petitioner was called for hearing on 07.08.2015 and 09.10.2015. The Chief Passport Officer, after perusing all the material and documents placed on record and considering the fact that, the petitioner has failed to produce NOC from the concerned Court, has rejected the Appeal of the Petitioner by order dated 05/02/2016. It is observed in the said order that the order of impounding the passport of the Petitioner passed by the Passport Officer is in order. The Chief Passport Officer found the Petitioner guilty of suppression of information relating to her prosecution in her passport application. However, the appellate authority granted liberty to the Petitioner to move fresh application before the concerned courts, where the criminal cases are pending for issuing NOC for restoration of passport facility.

25. It appears that pursuant to the said liberty, the Petitioner herein preferred an application before the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai requesting for NOC for the purpose of restoration of passport facility. However, the learned Magistrate relying upon the order of a learned Single Judge of this Court in Writ Petition No.1543 of 2013 (Kiran Rasiklal Mehta v/s. State of Maharashtra and anr.) did not deem it appropriate to issue No Objection Certificate to the Petitioner for grant of passport. The Petitioner therefore appears to have filed Writ Petition No.526 of 2017 challenging the order dated 05/02/2016 passed by the Chief Passport Officer, and Writ petition No.841 of 2017 challenging the order dated 26/12/2016 passed by the learned Metropolitan Magistrate. As indicated herein above, the Division Bench (Coram : B P Dharmadhikari and Sarang V Kotwal, JJ) by order dated 18.12.2018 disposed of the said Writ Petitions with liberty to the Petitioner to move fresh application before the learned Metropolitan Magistrate in terms of notification dated 25.08.1993. Pursuant to the said liberty granted by the Division Bench of this Court, the Petitioner filed an application before the learned Magistrate for obtaining NOC for restoration of passport facility. However, the learned Magistrate by the impugned order dated 11/03/2019 rejected the application of the Petitioner.

26. From the record it appears that admittedly the passport of the

Petitioner has been impounded by the passport authority on the ground of suppression of information regarding pendency of criminal cases against the Petitioner. However, the passport authority has granted liberty to the Petitioner to obtain NOC from the concerned Court for restoration of passport facility. The Division Bench (Coram : S C Dharmadhikari & G S Kulkarni, JJ) whilst disposing of the Writ petition No.723 of 2014 filed by the Petitioner challenging the order of Passport Officer, restored the Appeal of the Petitioner and remanded the matter back for de-novo consideration. However, during pendency of the said Writ Petition, the learned Metropolitan Magistrate, Girgaum rejected the application of the Petitioner for issuance of NOC.

27. As indicated above, the Petitioner, pursuant to the liberty granted by the Division Bench of this Court vide order dated 18.12.2018, has filed the Application before the learned Metropolitan Magistrate, 18th Court, Girgaum for obtaining NOC from the said Court for restoration of her passport facility. It is therefore clear that this is the second attempt of the Petitioner. It is required to be noted that while granting the said liberty to the Petitioner to move fresh application before the learned Magistrate, the Division Bench in paragraph Nos.12, 13 and 14 of the said order dated 18.12.2018 has observed as under :-

“12 It appears that in exercise of this liberty, the Petitioner sought “No Objection Certificate” for the purpose of restoration of passport. The trial Court therefore could have looked into the said application in the light of notification dated 25/08/1993 and then passed the suitable order in terms thereof. We have already found supra that orders dated 19/11/2013 in Criminal Writ petition No.1543 of 2013 did not prohibit trial Court from considering request made in terms of notification dated 25/08/1993.

13 We in this situation, are inclined to grant Petitioner leave to move fresh Application before learned Metropolitan Magistrate in terms of notification dated 25/08/1993. If such Application is moved within two weeks from today, the trial Court shall decide it as per law within next four weeks.

14 After the orders are passed by learned Metropolitan Magistrate, it is open to the Petitioner to follow the procedure as stipulated in paragraph No.13(ii) of the Appellate authority’s order dated 05/02/2016.”

27. In the 2nd application filed before the learned Magistrate it is the case of the Petitioner that she intends to go to United Arab Emirates (UAE) for religious purpose i.e. for Umrah (Haj) and for that purpose she requires her passport which has been impounded by the passport authority. It is also stated in the application that the said NOC is being sought as per the directives issued by the Ministry of External Affairs in its Notification No. GSR 570(E) dated. 25.08.1993. The Petitioner is ready to submit her complete itinerary for travel to UAE prior to her travel. She therefore prays to issue appropriate NOC in her favour for restoration of passport facility.

28. However, the learned Magistrate, without taking into consideration the specific directions given by the Division Bench by order dated 18.12.2018, has proceeded to pass the impugned order dated 11.03.2019 thereby rejected the application of the Petitioner. The Division Bench, by order dated 18/12/2018, whilst disposing of the Writ Petition Nos.526/2017 (Ms. Chandbibi Zaidi Vs. Union of India and Ors.) and 841/2017 (Ms. Chandbibi Zaidi Vs. State of Maharashtra and ors.) granted leave to the Petitioner to move fresh application to the learned Magistrate, and also directed the learned Magistrate to look into the said application in the light of notification dated 25/08/1993 and then pass the suitable order in terms thereof. However, it appears that the learned Magistrate did not think it proper to deal with the application of the Petitioner in that angle, keeping in view the order passed by the High Court referred herein above. Though the Division Bench has held that the order dated 19/11/2013 in Criminal Writ petition No.1543 of 2013 did not prohibit trial Court from considering request made in terms of notification dated 25/08/1993, the learned Magistrate has proceeded to observe in paragraph 7 of the impugned order that,

“7 It is seen from the record that the passport authority is impounded the passport of applicant accused u/s.10(3)(b) and (e) of Passport Act. Therefore I am of the view that this Court has no jurisdiction to give direction to passport office to restore the passport of

applicant accused which impounded by them.”

In order to find out, whether the Court had jurisdiction to consider the prayer of the accused in pending case for issuance of NOC for restoration of his/her passport, it is apt to reproduce the Section 10(3)(b) and (e) of the Passports Act, 1967.

10. *Variation, impounding and revocation of passports and travel documents :-*

- (1)
- (2)
- (3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-
 - (a)
 - (b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport;
 - (c)
 - (d)
 - (e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.
 - (f)
 - (g)
 - (h)

Section 10 relates to variation, impounding, revocation of the passports and travel documents and empowers the passport authority that the authority

may impound the passport of Indian citizen under the situation mentioned in the said Section. In the present case, the Petitioner prayed before the learned Magistrate to issue NOC so that, she can apply to the Passport Authority for restoration of her passport which has been impounded by the Authority. She did not pray for any direction from the Court to direct the Passport Authority to issue, re-issue or restore her passport.

29. It is relevant to note that by virtue of Section 22 of the Act, the Central Government is empowered to exempt any person or class of persons from the operation of the provisions of the Act. Section 22 of the Act is reproduced herein under for the sake of ready reference :-

“Power to exempt.—Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.”

30. In exercise of the powers conferred under Section 22(a) of the Passports Act, the Central Government has issued a Notification being GSR 570(E) dated 25/08/1993, exempting the rigours of Clause (f) of Section

(2) of Section 6 of the Passports Act, subject to certain Conditions. The said Notification is reproduced herein under for the sake of ready reference :-

**“MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION**

New Delhi, the 25th August, 1993

G.S.R. 570(E). - In exercise of the powers conferred by clause (a) of section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs no. G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so hereby exempts citizens of India 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 orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the 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 one year,

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period 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) any passport issued in terms of a(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the citizen shall give an undertaking in writing to the passport issuing 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.”

31. In the context of the reference of Section 6(2)(f) in the aforesaid Notification, it would be apt to reproduce Section 6(2)(f) of the Act for the same of ready reference :-

“6. Refusal of Passports, travel documents, etc.-

(1)

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:

(a) to (e)

f) That proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India

(g) to (i)

The aforesaid provision of Section 6(2)(f) mandates that the passport authority shall refuse to issue a passport or travel document for visiting any foreign country on the grounds/contingencies mentioned in the said Section and one of the ground/contingency in which this mandate operates is in respect of pendency of criminal case, however, subject to other provisions of the Act.

32. By this Writ Petition the Petitioner prays that the impugned order dated 11/03/2019 passed by the learned Magistrate may be quashed and set aside and her application dated 31/12/2018 for issuance of appropriate NOC in her favour for restoration of passport facility, in consonance with the directions issued by Notification No.GSR 570(E) dated 25/08/1993 and in view of directions in the order dated 05/02/2016 of the Appellate Authority may be allowed. It is required to be noted that though the passport authority impounded the passport of the Petitioner, it also granted liberty to move fresh application before the concerned Court for NOC for restoration of her passport.

33. The learned counsel for the Petitioner invites attention of this Court to the order passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai dated 14/02/2019 in CC No.108/PW/2010 wherein in similar facts situation the learned Magistrate was pleased to allow the application of the accused thereby issuing NOC in favour of the accused therein. The learned Magistrate after hearing the advocates and after taking into consideration the fact of pendency of criminal case against the accused therein has allowed the application and issued no objection for renewal or restoration of the accused as per rules.

34. The learned counsel for the Petitioner submits that the Petitioner is ready to give undertaking that if the NOC is issued in favour of the Petitioner, the Petitioner will not misuse the same. The Petitioner is also ready to give an undertaking in writing to the passport issuing authority that she shall, if required by the court concerned, appear before the Court at any time during the continuance in force of the passport so issued.

35. Taking overall view of the matter and considering the Notification dated 25.08.1993, the relevant provisions of Passports Act, as also the purpose for which the Petitioner intends to go to UAE, and also considering the submissions made by learned counsel for the parties and the material produced on record, this Court is of the opinion that, instead of

relegating the Petitioner again back to the Court of learned Magistrate for obtaining NOC for the purpose of restoration of her passport facility for limited duration, it would be appropriate if the Petitioner is granted NOC as prayed by her. However, it cannot be forgotten that the Petitioner has suppressed vital/material information relating to the criminal cases pending against her in the criminal court. However, keeping in view the purpose stated in the Petition/application filed before the Magistrate that the Petitioner intends to go to UAE for Haj pilgrimage and in the facts and circumstances of the present case, and keeping in view the order dated 14/02/2019 passed by another Magistrate in CC No.108/PW/2010 granting NOC, and the fact that the learned Magistrate in the present case has failed to exercise jurisdiction vested in him, this Court is inclined to grant NOC in favour of Petitioner, leaving it to concerned authority to take an appropriate decision.

36. In so far as contention of the learned APP that the Petitioner is not cooperating speedy trial and flouted the conditions of bail, and if she travels abroad, she may not be available for trial is concerned, the law will take its own course. The passport of the Petitioner has not been impounded on the orders of the Court, but it is impounded on the orders of the passport authorities due to suppression of material information relating to criminal proceedings pending against the Petitioner in the criminal court. In the

aforesaid notification it is nowhere mentioned about restoration or impounding of the passport by the Court. The only relief that the Petitioner is seeking is to issue NOC from the Court for restoration of her passport facility as required/directed by the Passport Authority. The Petitioner has not prayed to issue directions from Court to the Passport Authority to issue, re-issue or restore her passport. It is important to note that the Petitioner needs the NOC as per the directives issued in Notification No.GSR 570(E) dated 25.08.1993. In view of the aforesaid Notification and, as also in view of the leave granted by the Division Bench of this Court by order dated 18/12/2018 the Petitioner had applied to the learned Magistrate for NOC for restoration of her passport, which is required/directed by the Passport Authority for restoration of her passport which has been impounded by the Authority. Hence the following order :-

- 1] The impugned order dated 11/03/2019 passed by the learned Metropolitan Magistrate, 18th Court at Girgaum, Mumbai is quashed and set aside.
- 2] The Application dated 31/12/2018 filed by the Petitioner seeking NOC is allowed. No Objection is issued in favour of the Petitioner for restoration of passport facility for minimum period mentioned in the Notification No.GSR 570(E) dated

25/08/1993 keeping in view the Petitioner's purpose of visit to Umrah (Haj).

- 3] The Petitioner to follow the procedure as stipulated in paragraph No.13(ii) of the Appellate authority's order dated 05/02/2016.
- 4] The concerned Passport Authority may consider the application of the Petitioner for restoration of passport on its own merits independently as per the prescribed rules and provisions and in accordance with law uninfluenced by this Order.
- 5] If the Passport Authority restores the passport of the Petitioner as per rules, the Petitioner is hereby directed to obtain permission from the concerned Court whenever she travels abroad and furnishes detailed information of her travelling abroad to the said Court. The concerned Court would be at liberty to impose conditions as it deems appropriate in the facts of the case.
- 6] In the event, the Passport Authority accepts the request of the Petitioner and inclined to allow her prayer, in that case, the

Petitioner shall give undertaking that she will not misuse the liberty granted to her and if required/directed by the concerned Court shall appear before the Court at any time during the continuance in force of the passport so issued. Giving of an undertaking by the Petitioner is a condition precedent.

- 7] The Petitioner to appear before the Passport Authority within a period of two weeks from today, and thereafter the Passport authority shall dispose of the application of the Petitioner as per rules expeditiously.
- 8] With the aforesaid directions, the Writ Petition is disposed of. Rule is made absolute to the aforesaid extent.

(S.S. SHINDE, J.)