

1. The applicant was arraigned as an accused in C.R. No. 17/2017 investigated by Anti-Robbery and Dacoity Cell, Crime Branch Kurla (West), Mumbai. Initially the offence was registered with Sahar Police Station, Mumbai, being C.R. No. 122/2017 for the alleged offences punishable under Sections 370(5), 465, 467, 468, 471, 419, 420, r/w. Section 120 (B) of Indian Penal Code and Section 12 (1) (2) of the Passport Act.
2. The Applicant had preferred an application for bail before this court bearing Bail Application No. 2023/2017. The said application was allowed vide order dated 09th October 2017. While

allowing the said application this court had imposed certain conditions and one of the condition is that the applicant shall continue to keep the passport with the investigating officer. The applicant should not go to any foreign country during the pendency of the trial of this offence against him till completion of trial.

3. The Prayer in this application is to modify order dated 09th October 2017 passed by this court in Criminal Bail Application No. 2023/2017, in as much as condition no. VI be modified and the passport of the applicant be returned to the applicant. The condition no. (VI) in the order dated 09/10/2017 is as follows.

“(VI) The applicant should continue to keep his passport with the investigating officer. The applicant should not go to and foreign country during the pendency of the trial of this offence against him till completion of the trial.”

4. The learned advocate for the applicant submitted that bail was granted to the applicant on 09th October 2017 and the Passport continued to be in custody of the investigating officer. It is submitted that the continuation of Passport with the investigating officer is against the mandate of the Hon'ble Apex Court in the matter of **Suresh Nanda V/s Union of India (2008) (3) SCC 674.** It is submitted that, in the decision of Suresh Nanda the Hon'ble Apex Court has taken a view that retention of passport for a long time tantamount to impounding the passport which is permissible only under the Passport Act, and the police and or investigating agency

cannot embark upon to seize the passport during the course of investigation and the court took view that even the court cannot impose condition to deposit the passport which would amount to impounding the passport. Learned Counsel also relied upon the decision of this court delivered in the case of **Jignesh Prakash Shah Vs. CBI – (2008) SCC ONLINE BOM 1166**, holding that the Passport Authority will be at liberty to initiate proceeding in accordance with Section 10 (3) (e) of Passport Act, but the passport will have to be returned to the accused and cannot be retained by investigating agency.

5. It is submitted that passport is invaluable document and apart from the right to travel abroad which is constitutional right, it is an important document to establish identity of a person, his place of birth etc. Learned counsel further submitted that presently the passport may be returned to the applicant and when he is required to travel abroad, he would prefer an application seeking such permission.

6. It is submitted that the charge sheet is filed against the applicant however, the investigating agency in exercise of powers under Section 173 (8) of Cr.P.C. continued with further investigation of the case. He further submitted that the petitioner and others have preferred Writ Petitions before this court challenging the proceedings primarily on the ground that section 370 of IPC is not attracted and by interim order dated 03rd February 2019, the Proceeding before the trial court were stayed. The applicant had preferred Writ Petition No.

5865 of 2018. The said petition is pending. Hence trial is not likely to commence in near future. The applicant cannot be deprived of right to travel abroad which flows from Article 21 of Constitution of India.

7. The learned APP submitted that the applicant is involved in serious offence. The applicant is the kingpin of the racket of trafficking minor children in foreign country by the gang lead by the applicant. The raid at the place of employee of the applicant who is the co-accused in this case revealed that 135 children got passport through the applicant and co-accused. If the passport is handed over to the applicant there is likelihood that he may abscond. The learned APP further submitted that the condition was imposed while granting bail to the applicant and hence ratio laid down in the decision of Suresh Nanda delivered by Hon'ble Apex Court and the decision of this court in the case of Jignesh Shah are not applicable in the present case.

8. Having heard both the sides I have perused documents on record. The applicant was arrested in connection with the aforesaid offences. He preferred bail application before the Sessions Court which was rejected. Thereafter, the application for bail was filed before this court, the said application was allowed by order dated 09th October 2017. The application was vehemently opposed by prosecution. It was urged that there is every likelihood of the applicant committing similar offence in future. He was involved in racket of trafficking minor children. It was also submitted that further

investigation is in progress. This court while granting bail observed that the apprehension of the prosecution can be taken care of by imposing certain conditions.

9. Condition No. VI direct that the applicant shall continue to keep the passport with the investigating officer. He shall not go to any country during the pendency of the offence against him till completion of the trial.

10. Thus, the aforesaid condition was imposed after taking into consideration the circumstances enumerated therein. The condition to retain the passport with the investigating officer was imposed as condition precedent for grant of bail. The ratio laid down in the decisions referred to herein above was in the factual matrix of the said cases and in different context. In the case of Suresh Nanda the passport was seized during the search effected by CBI. The application was moved by the petitioner therein before the Special Judge for release of his passport stating that he cannot travel abroad. The passport was released on imposing certain conditions. Aggrieved by the said order the CBI had preferred Criminal Revision Petition before the High Court. The High Court reversed the order of Special Judge and refused to release the passport. Aggrieved by the order of High Court an appeal was preferred before the Supreme Court by appellant. The respondent therein had contended that the passport was seized and impounded in exercise of power under Section 102 r/w 165 and 104 of Cr.P.C. In this context the Supreme Court had

observed that steps under Section 10 of Passport Act were not initiated. The Passport Authority has the power of impound the passport under Section 10 (3) of Passports Act. It was further observed that the police have power to seize a passport under Section 102 (1) of Cr.P.C. but it does not have the power to impound the same. If after seizure of property and documents the same is retained for some period of time, then such retention amounts to impounding of the property or documents.

11. In this circumstances, it was also observed that even the court cannot impound passport. Thus, the Hon'ble Apex Court was dealing with the situation where the passport was seized by the investigating machinery and whether it can be retained indefinitely. The Hon'ble Apex Court did not deal with the situation where the court imposes condition to deposit passport as condition for grant of bail. Similarly, in the case of Jignesh Shah the passport was seized by the investigating agency. The applicant preferred an application for return of passport. While granting bail the court had imposed condition that the accused shall not leave India without permission of the court as well as CBI. The passport was seized on 13th March 2014 and it continued to be in custody of CBI. The Special Judge rejected the application for return of passport by order dated 28th September 2017 and directed CBI to forward the passport to the Passport Authority with a letter stating that the passport deserves to be impounded under Section 10 (3) of the Passport Act and to adjudicate to impounding of passport. Thus, the issue involved in the said

decision was completely different and the ratio laid down therein will not be applicable in the present case.

12. The applicant was granted bail on 09th October 2017. Charge Sheet was filed against the applicant. It appears that further investigation was in progress. The applicant had challenged the proceedings wherein interim relief has been granted and the said proceedings are pending in this court. The condition of keeping the passport with CBI was granted taking into consideration apprehension expressed by the investigating agency. On the ground urged by applicant that condition of depositing passport with CBI could not have been imposed in view of provisions under Passports Act and the decisions relied upon by applicant, the passport cannot be returned to the applicant. The learned Advocate had contended that presently passport be returned to applicant. Such prayer deserves to be rejected. However, it is not clear as to when this proceedings would come to an end as apparently further investigation is in progress. The proceedings are also under challenge before this court. The learned counsel had also contended that at appropriate time applicant would prefer application seeking permission to travel abroad. In the light of the circumstances, the applicant can be granted liberty to prefer an application to travel abroad as and when required, which shall be decided by court on its merits. Since the charge sheet is filed applicants is at liberty to prefer such application before trial court. In the circumstances, relief prayed in this application for return of passport to the applicant cannot be granted.

ORDER

1. Criminal Application No. 810/2018 stands rejected.
2. The applicant is at liberty to prefer application to travel abroad before trial court and such application shall be decided by court on merits and in accordance with law.

[PRAKASH D. NAIK, J.]