

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3464 OF 2019

Partheban A. L. Durai]
Aged 41 years, Malaysian citizen,]
Having his permanent address at No.8-8-B Block]
Perdana Villa, Jalan Bendahara K G Jawa,]
Klang, Selangor, Malaysia,]
and Malaysian ID No.770223-14-5911]..... Petitioner.

Versus

1] Directorate of Revenue Intelligence,]
Mumbai Zonal Unit, 13,]
Sir Vithaldas Thackersay Marg,]
New Marine Lines, Mumbai – 400 020]
2] Union of India]
Through the Ministry of Finance]
Department of Revenue, Room No.46,]
North Block, New Delhi – 110 001]
3] State of Maharashtra]
Through Home Department]
Madam Cama Road, Hutatma Rajguru Chowk,]
Nariman Point, Mumbai, Maharashtra – 400032]..... Respondents.

Mr. Nikhil Mengde a/w Mr. Yash Jariwala and Ms Anjala Parveen for Samvad
Parnters for the Petitioner.

Ms. Rebecca Gonsalves for Respondent No.1.

Mrs. Rutuja Ambekar, APP for the Respondent/State.

CORAM : S. S. SHINDE, J
DATE : 09th August 2019

JUDGMENT :

1 Rule. With the consent of the learned counsel for the parties, Rule
is made returnable forthwith and heard.

2 By this Writ Petition the Petitioner seeks directions to Respondent No.1 – Directorate of Revenue Intelligence to hand over to the Petitioner the Petitioner's Passport bearing No.A3704426 and, to refund the amount of INR 30,000/- (Rupees Thirty Thousand only) taken from the Petitioner at the time of releasing the Petitioner on bail in connection to the Petitioner's arrest on 15th March 2019.

3 It is the case of the Petitioner that Petitioner is a Malaysian national who arrived at Chhatrapati Shivaji Maharaj International Airport, Mumbai on 15/03/2019 from Kuala Lumpur, Malaysia by Malaysian Airlines. After completing formalities at Airport, some officers of Respondent No.1 approached to the Petitioner and made inquiries. It is the case of the Petitioner that Respondent No.1 forcefully confiscated all personal belongings of the Petitioner including Malaysian Passport and, illegally detained him at the Airport for 6 hours. It is stated by the Petitioner that the Petitioner was then taken to the office of Respondent No.1 where the Petitioner was illegally detained and tortured with a view to making the Petitioner confess to some alleged smuggling of goods into India. It is also the case of the petitioner that the Petitioner was neither informed the grounds of his arrest/detention nor was he produced before a Magistrate during the entire period of his detention. It is stated that the Petitioner was forced to sign on several documents without

reading out its contents to him. The Petitioner was then released by Respondent No.1 on an alleged bail and INR 30,000/- was collected from him by Respondent No.1 towards such bail. The Petitioner repeatedly requested Respondent No.1 to return his Passport which was illegally retained by Respondent No.1, but Respondent No.1 did not give any heed to the said requests. It is further the case of the Petitioner that Respondent No.1 has violated the fundamental rights available to the Petitioner under Article 21 of the Constitution of India. The Petitioner therefore filed the present Petition seeking directions to Respondent No.1 to return the passport of the Petitioner and refund of Rs.30,000/- to the Petitioner.

4 Heard the learned counsel for the parties. At the outset, learned counsel for the Petitioner states that the scope of the present Petition is restricted to the action of Respondent No.1 impounding the Petitioner's passport. The learned counsel for the Petitioner submits that, although the Petitioner is not an Indian national, he is still entitled to the basic human rights as enshrined in the Constitution under Articles 21 and 22 irrespective of his nationality or citizenship. It is submitted that for no reason Respondent No.1 has illegally detained the Petitioner and forcefully confiscated his belongings including his passport. It is submitted that Respondent No.1 has illegally retained the passport of the Petitioner and violated the Petitioner's fundamental right of personal liberty and the right to travel abroad as also his

fundamental rights by illegally impounding and retaining the Malaysian Passport of the Petitioner without informing him the grounds of his arrest or producing the Petitioner before a Magistrate. It is submitted that as per provision of Customs Act, 1962, Respondent No.1 is required to inform the Petitioner the grounds of his arrest and to produce him before the Magistrate without any delay. It is submitted that Respondent No.1 could not have collected Rs.30,000/- towards the alleged bail of the Petitioner. It is submitted that though it is assumed that the Petitioner has committed the alleged offence, the said offence is bailable and there is no need to seize the Passport of the Petitioner. As stated herein above, though several grounds have been raised in the Petition, the learned counsel for the Petitioner has confined his arguments only to the release of passport of the Petitioner since Respondent No.1 have no authority to seize or confiscate the passport. In support of his submissions the learned counsel for the Petitioner relied upon the following judgments :-

- 1] Suresh Nanda v/s. CB; (2008) 3 SCC 674
- 2] Avinash Bhosale v/s. Union Of India; 2009 (2) Bom CR (Cri) 248.
- 3] Shahid Ali v/s. Commissioner of Customs of Calcutta High Court
in WP No.641 of 2012;
- 4] M. Kaja Mohaideen v/s DRI; 2013 MLJ (Crl) 720
- 5] Craig Maxwell Sterry v/s Ministry of Home Affairs;
2009 (6) Bom. C.R. 698
- 6] Isaac Isanga Musumba v/s State of Maharashtra and ors.

(2014) 15 SCC 357.

He specifically invites attention of this Court to the discussion in paragraphs 11 to 15 of the judgment in case of Suresh Nanda (*supra*) and submits that, the Supreme Court has ruled that the Respondent-Authority therein had no power to impound passport, even under the provisions of Cr.PC. the Court held that, even the Court cannot impound the passport, the learned counsel also invites attention of this Court to the ratio laid down in the cases of *Avinash Bhosale (supra)*, *Shahid Ali (supra)* and *M Kaja Mohaindeen (supra)* for the aforesaid legal proposition.

The learned counsel also invites attention of this court to provisions of the Customs Act and the Foreigners Act, and submits that there is no provision under the Customs Act or Cr.PC. which authorizes the Respondents to impound the passport. It is submitted that the provisions of the Foreigners Act would prevail over the provisions of the Customs Act.

5 The learned counsel for Respondent No.1 submits that the petitioner is involved in smuggling of human embryos into India by mis-declaring the same to the Malaysian Customs authorities as stem cells. It is submitted that when the petitioner was intercepted at the airport, a canister was found containing human embryos. She submitted that the Petitioner was

arrested under Section 104 of the Customs Act, 1962 on the reasonable belief that he had committed an offence under Section 135 of the Customs Act. It is submitted that the Petitioner was informed of the grounds of his arrest and was permitted to inform his wife about his arrest, however, the Petitioner was released on bail. It is also submitted that the material collected by Respondent No.1 during the course of investigation, including his mobile, clearly revealed the involvement of Petitioner in the offence of smuggling of human embryos from Malaysia to India. The learned counsel for Respondent No.1 vehemently opposed the prayer of the Petitioner to return the Passport to him and submitted that once the passport is released and permission is granted to the Petitioner to go abroad, he may misuse the same and will not come back. She further submitted that a show cause notice has been issued to the Petitioner in pending adjudication. It is also submitted that it is the 8th time of the Petitioner to come to India and there are serious allegations against him about involving in serious offence of smuggling of human embryos.

6 Heard the learned counsel appearing for the parties at length. With their able assistance, perused the pleadings, the grounds taken in the Petition and the annexures thereto, and the affidavit in reply filed by Respondent No. 1. It is required to be noted that the Petitioner is a Malaysian national, and during the period from 01/01/2017 to 15/03/2019 he visited India at least for 8 times, details of his arrival and departure have been placed

on record by letter dated 15/05/2019 issued by Police Inspector (Legal) Airport Branch, CSMI, Airport Mumbai. The purpose for his visit to India on eight different dates is not brought on record by the Petitioner. There are serious allegations against the Petitioner that the Petitioner is involved in smuggling of human embryos. The learned counsel for Respondent No.1 submitted that during the course of investigation, the mobile of the Petitioner was seized and from the messages of the Petitioner's phone, it is revealed that the Petitioner was to deliver the human embryos to the Indo Nippon IVF Clinic in Bandra (W), Mumbai, and when the investigation went to the said clinic and taken a search they found four documents relevant to the investigation. Thereafter at the relevant time, the Petitioner voluntarily and willingly surrendered his Malaysian passport bearing A37044226 to the DRI.

7 During the course of arguments the learned counsel for Respondent No.1 invites my attention to the letter dated 10/05/2019 written by the Deputy Director of Respondent No.1 to the Consul, Consulate General of Malaysia, Mumbai informing them about the arrest of the Petitioner in connection with smuggling of human embryos through CSI Airport, Mumbai on 16/03/2019 for committing an offence under Section 132 & 135 of the Customs Act and he was released on bail on the same day. It is also informed by Respondent No.1 to the Consulate General of Malaysia, Mumbai that the Petitioner is required to attend the office of Respondent No.1 as and when

required for investigation. By the said letter it is clarified that the Petitioner is not under detention by the office of Respondent No.1. It is also informed that investigation in respect of the smuggling of human embryo by the Petitioner is underway and, once the investigation is completed, a show cause notice would be issued to him, and therefore the Petitioner may be advised by your office for his VISA related issues. By another letter dated 10/05/2019 the Deputy Director of Respondent No.1 informed the Foreigners Regional Registration Office (F.R.R.O), Mumbai regarding apprehension of the Petitioner in connection with the alleged offence and releasing him on bail, about his arrangement for stay. It is further informed to FRRO by Respondent No.1 that VISA issued to the Petitioner is valid upto 19/07/2019 and each stay is not to exceed 45 days. Therefore office of Respondent No.1 has advised Malaysian embassy to approach the office FRRO for VISA related issues of the Petitioner. From the record it is revealed that as directed by this Court dated 19/07/2019, by letter dated 19/07/2019 Respondent No.1 has furnished coloured photocopies of the passport and VISA of the Petitioner to the Petitioner. By the said letter it is informed to the Petitioner that the original passport is in the custody of office of Respondent No.1. By letter dated 18/03/2019 the Petitioner has accordingly written a letter to the Senior Intelligence Officer, Director of Revenue Intelligence stating therein that he willingly surrender his passport to the office in connection of seizure of human embryos at arrival hall of CSI Air Port Mumbai on 15/03/2019. From reading of the said letter it is

clear that the passport of the Petitioner has not been impounded or confiscated or retained illegally by Respondent No.1, but has been voluntarily and willingly surrendered at the relevant time by the Petitioner to Respondent No.1 in connection with the seizure of the human embryos.

8 In so far as the judgments cited by the learned counsel for the Petitioner are concerned, the learned counsel for the Petitioner fairly conceded that the judgments cited by him are dealing with the cases of Indian Nationals and not concerned with foreigners. In the peculiar facts of the present case, the prayer of the Petitioner cannot be acceded to since he is involved in smuggling of human embryos into India and the Respondents have seized concrete incriminating material against the Petitioner.

9 It is pertinent to mention at this stage that a show cause notice has been issued to the Petitioner. Petitioner is a Malaysian National, and if his passport is returned to him, he will leave India and may not return for adjudication, and it will be very difficult to secure his presence in India for the purpose of adjudication and trial. The offence in which the Petitioner is alleged to have been involved is a serious one i.e. the smuggling/illegal import of human embryos into Indian from Malaysia by mis-declaring the same to the Malaysian Customs authorities as stem cells. The presence of the Petitioner for adjudication and trial is necessary.

10 In that view of the matter, no case is made out. The Writ Petition stands rejected. Rule is accordingly discharged. Needless to state that, the observations made herein above are confined to the adjudication of the present writ petition only.

[S. S. SHINDE , J]