

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2238 OF 2019

Rakeshkumar Jayprakash GaurApplicant

V/s.

The State of MaharashtraRespondent

Mr. Aaditya Arvind Gore, Advocate for the
applicant.

Mr. S.R. Agarkar, APP for State.

CORAM : SANDEEP K. SHINDE, J.**DATED : 20TH DECEMBER, 2019.****P.C. :**

1. The applicant is seeking enlargement on bail in Crime No. 16/2019 registered with Criminal Intelligence Unit (OPS), Detection Crime Branch (DCB), CID, Mumbai for the offences punishable under Sections 417, 419, 420, 465, 467, 468, 471 read with Section

120B of the Indian Penal Code and Section 12(1) (2) of the Passport Act. Officer attached to the Bureau of Immigration, reported that on 11.2.2019 at 20.00 hrs, he was assigned duty at Counter No.14 at Airport. At 1.00 a.m. one, Mahipal Arsolia, a passenger travelling to Mexico showed his passport and boarding pass at counter. On verification, passport was found bearing a visa of Japan valid upto 6.5.2019. When enquired, Mahipal informed it is permissible to enter Mexico, if a person holds visa of Japan. At the same time, two other passengers, Vipin Arsolia, age 15 years and Shailendra Arsolia (accused no.2) had produced their passports and boarding passes, who were co-passengers with Mahipal Arsolia and travelling to Mexico via Japan. Immigration incharge found something amiss and on detailed enquiry, Vipin Arsolia (victim) and Shailendra Arsolia (accused no.2) disclosed their true names, as Balraj Singh Satnam Singh and Shailendra Randhir Singh Deshwal. In other words, these two persons were concealing their

identity and by impersonation travelling to Mexico, in another name on forged passports. On personal search of these two persons, several documents, including fake passports were seized. Balraj Singh Satnam Singh (victim) disclosed that he wished to go USA. It appears from victim's statement that, accused (agents), Jagtaar Singh, Nirmal Singh, Mahipal Arsolia, Shailendra Deshwal and others hatched a conspiracy to make fake passport of victim and sent him to USA via Mexico. Thus, Officer attached to Bureau of Immigration lodged the complaint and the subject offence came to be registered against Mahipal Arsolia and others. In the course of enquiry, statements of victim and his father were recorded wherein it is disclosed that in 2017, one Jagtaar Singh promised father of the victim to send his son to USSR for consideration of Rs. 8,00,000/-. It appears this plan did not materialize. It also appears, the passport of the victim was kept in the custody of Jagtaar Singh. In October, 2018 the victim met Jagtaar Singh at Delhi who then

promised him to secure his employment in USA and would sent him over there. Investigation shows, after October, 2018 one Nirmal Singh at the behest of Jagtaar Singh introduced victim to Mahipal Arsolia and thereupon Mahipal promised his journey and entry in the USA. The investigation has disclosed, somewhere in October, 2018 the victim had visited the office of Mahipal, where present applicant was found sitting. Victim was advised to obtain a new passport from Delhi and accordingly the victim paid Rs.1,00,000/- to Mahipal. Somewhere in November, 2018 victim, visited the office of Mahipal. Thereafter at the instance of Mahipal, victim, visited the Bank and a passport office with the present applicant and driver of Mahipal. Evidence shows, this applicant had accompanied the victim to the passport office on 14.12.2018. On this disclosure, the present applicant came to be arrayed as accused and arrested on 27.2.2019.

2. Counsel for the applicant submits, applicant's office is in the same building where

Mahipal's office is situated. It is submitted, neither the applicant was knowing the victim or his family nor had received any consideration from them. Submission is, though applicant was present and allegedly accompanied the victim in the passport office, that itself even if accepted to be correct, would not show or disclose his complicity in the offence of forgery. It is submitted that, applicant has no criminal antecedents. The investigation is over.

3. Counsel for the applicant submits, prima-facie, the accusations do not make out the offence punishable under Section 370(4) of the Indian Penal Code. Counsel submitted, the victim was subjected to Ossification Test which revealed his age between 18 years to 19 years as evident from the communication addressed by Inspector of Police, DCB, CID, Mumbai to the Administration Officer, Gurdaspur, Punjab. Counsel further submitted that the victim was not minor in view of the result of the Ossification test. It is further submitted, the

victim voluntarily agreed to travel to USA with the consent of his father and therefore it does not amount to "exploitation" in terms of Explanation-II appended, to Section 370 of the Indian Penal Code. Thus, taking into consideration, the facts of the case, the application is allowed on the following terms.

(i) The applicant is directed to be released on bail in Crime No. 16/2019 registered with Criminal Intelligence Unit (OPS), Detection Crime Branch, CID, Mumbai on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like amount.

(ii) The applicant being a resident of Uttar Pradesh shall furnish local surety.

(iii) The applicant shall attend the Police Station concerned as and when called.

(iv) The applicant shall furnish the particulars of his place of residence and mobile number to the Investigating Officer of the Police Station concerned within seven days from his release on bail.

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

4. With the above directions, the Bail Application stands disposed off.

(SANDEEP K. SHINDE, J.)