

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

**CRIMINAL INTERIM APPLICATION NO. 809 OF 2020
IN
CRIMINAL APPLICATION NO. 237 OF 2016**

Krishnan Narayanaswamy ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Pranav Badheka a/w. Ms. Alisha Ningoo i/b. M/s. M. M. Legal Associates, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 1st APRIL, 2021.

PC :

1. This is an application seeking direction to the passport authorities to reissue the passport of the applicant for a period of 10 years.

2. The applicant was granted anticipatory bail by the Sessions Court, Thane in ABA No. 2506 of 2015 vide Order dated 29th October, 2015 in connection with C.R. No. II-26 of 2015 registered with Turbhe MIDC Police Station on certain conditions.

3. The order dated 29th October, 2015 reads as follows:

i. Application is allowed;

- ii. Applicant's be released on their executing PR. & S. B. of Rs.20,000/- each with one solvent surety in the like amount in the event of their arrest of at the hands of Turbhe Police Station in connection with C.R. No. II-26/2015;
- iii. Applicants shall attend concern police station on 31st October, 2nd November, 2015 between 9.00 a.m. to 12.00 noon and then shall attend concern police station on every 4th Monday of the month till further orders;
- iv. Applicants shall not leave India without prior permission of the Court and shall report compliance of the order on fix remand date.

4. The applicant preferred Criminal Application No. 237 of 2016 before this Court for relaxation of conditions. By Order dated 27th April, 2016 it was directed that the applicant need not attend the police station on every 4th Monday of the month and they shall attend police station as and when called by the investigating officer till filling of the charge-sheet. The condition No. 4 was relaxed and substituted, directing applicant/ accused to submit itinerary to the investigating officer whenever the accused will travel abroad and shall provide the address of stay abroad.

5. The applicant and others preferred Criminal Writ Petition No. 755 of 2016 before this Court for quashing the FIR. By Order dated 21st March, 2016 it was directed that till next date, charge-sheet shall not be filed. Subsequently, vide order dated 30th

August, 2016, this Court directed that, interim order to continue till next date with clarification that investigation shall continue.

6. The applicant had travelled abroad as per the directions of this Court. He submitted his itinerary and travel details to the Senior Inspector of Police, MIDC Police Station, Turbhe before each travel.

7. The applicant contends that he is working as the Chief Financial Officer of Group of companies in India including merck Life Science Private Ltd. The applicant is professionally qualified and was working with said company in professional capacity. Merck Group is primarily engaged in business of providing life sciences solution to the worldwide populace. Particularly the research, development, manufacture and marketing a life saving drugs, chemicals and devices to support industries engaged in such development and academics. The applicant further contends that as a CFO the applicant is responsible for financial planning, finance management, tax planning, maintaining accounts, coordination with various functions including global teams providing financial information to businesses and participation in the overall company's strategies and planning which require him to travel extensively.

8. The applicant state that the earlier passport of the

applicant bearing Passport No. Z1728481 was issued on 22nd August, 2008 and it was valid till 21st August, 2018. Thus, it was issued for 10 years. The applicant applied for reissuance of his passport before Regional Passport Officer, Mumbai on 13th May, 2018. The application of the applicant was allotted file No. BO4072357092418. The applicant was called at the passport office Thane on 16th May, 2018 for processing the application. The concerned officer enquired about the criminal matter pending against him and asked him to submit the records and proceeding of the case, which documents were scanned and uploaded with the application. The passport application has one column to be filled in with respect to any pending criminal matter and accordingly the applicant in fairness revealed the pendency of the criminal proceedings. The passport officer then called upon the applicant to provide the order from the Court directing issuance of passport.

9. The passport officer kept the application pending with remarks *“To furnish permission from Court for RVPPT”*.

10. Notification published in the Gazette of India was issued by Ministry of External Affairs bearing No. G.S.R570(E) on 25th August 1993. The said Notification reads as follows:

G.S.R. 570(E). - In exercise of the powers conferred by clause (a)

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) 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 said 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.

11. The applicant preferred Misc. Application No. 744 of 2018 seeking direction to the passport officer to reissue the passport to the applicant. This Court by Order dated 29th June, 2018 allowed the application and directed the passport authority to consider the application on merits. Pursuant to the aforesaid order, the applicant approached the passport authority for reissuance of passport. The passport authority reissued the passport bearing No. Z50/866G dated 3rd August, 2018 for a period of one year. Thus, the renewal was upto 2nd August, 2019. The applicant again preferred an application before this Court seeking directions for reissuance of passport for a period of 10 years. By Order dated 9th July, 2019 this Court directed that the passport authority shall consider the application for renewal on merits in accordance with the rules. The passport was reissued again

for a period of one year, which was expired on 11th September, 2020. The applicant preferred this application on 11th February, 2020. Thereafter on account of pandemic of covid-19 lockdown was declared. This application is pending since then.

12. The learned advocate for the applicant submit that the applicant being part of senior management of the company, has to frequently travel abroad to attend strategic meetings, review meetings, conference and seminars to represent India in such forums. The agenda of such meeting is generally finalized in one to four months in advance. While making visa application for several countries, it requires the passport to be valid atleast for a period of six months, which causes inconvenience and hardship to the applicant in discharge of his professional duties, if the passport is issued for less than 10 years.

13. The applicant was required to travel to various countries. It is submitted that original passport is required atleast one month prior to scheduled travel. Visa application requirement for many countries require original passport to be valid for atleast 6 months beyond the contemplated stay. Most of the meetings were temporarily kept on hold due to epidemic of coronavirus. However, the inconvenience remains the same since as a CFO, he is required to

travel around the world and the requirement of passport being valid for a period of 6 months from return date to India is a Visa requirement in most of the countries, which effectively makes the applicant apply for renewal of its passport every 6 months. The applicant has reproduced his programme in the application, which extends upto July, 2022. The applicant states that as Chief Financial Officer he is responsible for financial planning, finance management, tax planning, maintaining accounts, coordination with various functions including global teams and so demands him to travel on multiple occasions to discuss on financial aspects for the growth of the company which includes but not limited to treasury aspects, cash flow for India business, tax litigations, business valuations, accounting reporting of financial audit aspects etc.

14. The applicant states that as the applicant is required to travel frequently, the applicant intends to obtain a longer validity Visa however the Visa Consulates cannot grant long validity Visa since the passport validity of the applicant is for a short period of time. In the past the applicant was granted long term Visa by the German and other consulates however recently the same consulate have granted Visa only for the prescribed days of travel. The aforesaid results in not only making multiple applications for Visa for the same destination but also increases the cost in preferring such

applications multiple times and accordingly it is just and necessary that the Hon'ble Court directs the passport authority to again reissue the passport of the applicant and that two for a period of 10 years as is done for other citizen of the country.

15. The applicant states that in the aforesaid circumstances, undue hardships are caused to the applicant. The applicant further states that his employment is his livelihood; wherein the applicant is required to travel abroad frequently and if each time the applicant is required to get an order from the Hon'ble Court, even for renewal of the passport, then in that event the applicant's professional commitment will get affected and the applicant's employer may terminate the employment of the applicant, in case the applicant is unable to travel for the business development of the company due to the hindrances as more particularly enumerated hereinabove. The applicant further states that the applicant being a law abiding citizen of India and in compliance of the said order has been always informing about his Itinerary and travel details to the Senior Inspector of the Police, MIDC, Turbhe before this travel, which clearly demonstrate the *bonafide* of the applicant. There are no prior antecedents to the credit of the applicant, which is also recorded in the said order. The criminal case was registered in the year 2015. The applicant has regularly and diligently complied with the all the

directions of this Hon'ble Court, which demonstrates the genuineness of the applicant.

16. Learned APP submitted that the Criminal proceedings are pending against the applicant. There is no necessity of granting permission for issuance of passport for a period of 10 years.

17. Criminal proceedings are pending against the applicant. Criminal Writ Petition challenging the FIR is pending in High Court. Although investigation was permitted, interim relief has been granted in the said petition restraining investigating agency from filing charge-sheet. The applicant has been complying directions/ conditions stipulated in order granting anticipatory bail. Passport has been reissued/ renewed pursuant to orders of this Court. The applicant is frequent traveller abroad as a professional.

18. As per Section 3 of the Passport Act, 1967 No person shall depart from or attempt to depart from India, unless he holds in this behalf a valid passport or travel documents. Section 6 of the Act relates to refusal of passports, travel documents etc. Section 6 (2) (f) stipulates that, 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 grounds mentioned therein

namely (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal Court in India. Section 5 relates to applications for passports, travel documents etc and orders thereon.

19. Notification dated 25th August, 1993 referred to above, has been issued in exercise of the powers conferred by clause (a) of Section 22 of Passports Act, 1967 and in supersession of the Notification dated 14th April, 1976 G.S.R298 (E), the Central Government being of the opinion that it is necessary in public interest to do so, exempting citizen 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 conditions.

20. The conditions incorporated in the notification stipulate that the passport to be issued to every citizen shall be issued for the period specified in order of the Court, if the Court specifies a period for which passport has to be issued. If no period either for issue of passport or travel abroad is specified in such order, the passport shall be issued for a period of one year. Thus, if the period of passport is

not specified in order, it would be issued for a period of one year. Originally, the passport was issued to the applicant for a period of ten years. After initiating proceeding against the applicant, passport was renewed for a period of one year. The orders passed by this Court did not specify the period of renewal/ reissuance of passport. For the grounds/ reasons contemplated in the application, the applicant has prayed for directions to be issued to passport authority to reissue of passport for usual period of 10 years. In the light of grounds urged in the application, the passport authorities could be directed to reissue passport to the applicant for a period of ten years.

ORDER

- (i) Application is allowed;
- (ii) The applicant is permitted to renew the passport for a period of ten years. The passport authority shall reissue/ renew passport to the applicant for a period of ten years.
- (iii) Application is disposed off.

(PRAKASH D. NAIK, J.)