

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.199 OF 2021

Partheban Durai	..Petitioner
vs.	
Union of India and anr.	..Respondents

Mr. Atharva A. Dandekar for petitioner.

Mr. J.B. Mishra for respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: DECEMBER 14, 2021

P.C. :

1. This writ petition is at the instance of a Malaysian national. The prayer is for an order on the respondent no. 2 to forthwith return the petitioner's passport bearing No. A 37044226.
2. The facts giving rise to this writ petition are these. The petitioner had landed in Mumbai on March 15, 2019 and was intercepted by the unit of the respondent no. 2, Directorate of Revenue Intelligence. It was found on a search conducted on the petitioner that he was carrying a canister containing human embryo. This led to the

petitioner's arrest by the respondent no. 2 under Section 104 of the Customs Act in connection with offences punishable under Sections 132 and 135 thereof. While it is contended in the reply affidavit of the respondents that the petitioner voluntarily surrendered his passport, the pleaded case is otherwise. Be that as it may, adjudication case bearing No.2/14-1-01/2019-20/Adjn DRI/MZU/C/INT-62/2019 was initiated against the petitioner. An order dated August 5, 2020 was passed imposing penalty of Rs.3,50,000/- on the petitioner. It is not disputed by the respondents that the petitioner made full payment of the penalty amount on September 11, 2020. Despite payment of the penalty amount, the passport of the petitioner was not returned to him, which has disabled him to return to the nation he belongs. Repeated representations made by the petitioner, it is alleged, has proved abortive.

3. A co-ordinate Bench of this Court, while hearing this writ petition on January 21, 2021, had issued notice to the respondents and called for an affidavit by February 23, 2021.

4. Paragraphs 8 and 9 of the affidavit-in-reply of the respondents dated February 23, 2021, reads as follows: -

"8. The passport of the Petitioner has not been impounded or confiscated or retained illegally by the DRI, but has been voluntarily and willingly surrendered by the Petitioner to the DRI, in connection with the seizure of the human embryos from the bag of the Petitioner, on the intervening night of 15/3/2019 to 16/3/2019.

9. The Applicant/Appellant is a Malaysian National. The DRI apprehends that if his passport is returned to him, he will leave India, and may not return. There is every possibility for him to evade prosecution proceedings if the passport is handed over to him and allowed to return to Malaysia”

5. In fact, what has been pleaded by the respondents is mere repetition of what a learned Judge of this Court, while disposing of this petitioner’s earlier writ petition (Criminal Writ Petition No.3464 of 2019) on August 9, 2019 had observed. At that point of time, the adjudication case had not been disposed of and the Court had expressed an apprehension that the petitioner would flee the country if his passport were returned, thereby affecting the adjudication case.

6. We find no substance in the stand of the respondents that if the passport is returned to him, he will flee the country. In fact, Mr. Dandekar, learned advocate for the petitioner is right in his contention that it is for the precise purpose of leaving this country that return of the petitioner’s passport is required and that is his prayer.

7. We asked Mr. Mishra, learned advocate for the respondents, as to whether any prosecution is pending against the petitioner under any other enactment. The answer is in the negative. In such view of the matter, there is no reason to withhold the passport of the petitioner.

8. Additionally, the petitioner has been in India for nearly four years. One does not know whether his visa is valid or not. Overstaying could lead to punishable offences. This is

an additional ground why the passport ought to be returned to ensure that an individual such as the petitioner may leave the country soon.

9. The writ petition stands disposed of with a direction upon the respondent no. 2 to return the passport of the petitioner to him within a fortnight from date, provided an approach in this behalf is made together with a copy of this order. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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