

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

CRIMINAL WRIT PETITION NO.238 OF 2022

1. Kruti Jignesh Gajjar

2. Nishi Jignesh Gajjar

...Petitioners

Versus

The State of Maharashtra

...Respondent

Mr. Anand Mishra i/b Mr. Hitesh Patel, for the Petitioners.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 25th FEBRUARY 2022

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioners have impugned the order dated 15th November 2021, passed by the learned Additional Sessions Judge, Sewree, Mumbai (C.R. No.58) below Exhibits – 48 and 49 in Sessions Case No.171 of 2014, by which, the learned Judge rejected the applications of both the petitioners seeking return of their passports on a bond and to produce the same as and when required. The petitioner Nos.1 and 2 had filed two separate applications seeking return of their passport on the

premise that they were not charge-sheeted in the case filed against the petitioner No.1's husband and petitioner No.2's father.

3. Learned Counsel for the petitioners states that the petitioner No.2 is intending to appear for her examination in the International English Language Testing System (IELTS), as she intends to pursue further education i.e. Master in Computer Engineering at Durham College, Oshawa Durham College of Applied Arts and Technology, at Durham-Oshawa, Canada. It is submitted that the petitioner No.2 has applied for admission to the said college. It is submitted that for the said examination, the petitioner No.2 requires her passport.

4. Learned APP does not dispute the fact that the petitioners have not been named in the charge-sheet filed by the police. She, however, states that the passport can be released on the petitioners executing a bond that the same will be produced by them, as and when required.

5. Learned Counsel for the petitioners have no objection to the same.

6. Perused the papers. The petitioner No.1's husband and petitioner No.2's father was arrested in connection with C.R. No.126 of 2013, registered with the BKC Police Station, Mumbai (subsequently transferred to DCB, CID, Unit-IX and re-registered as C.R.No.69 of 2013), for the alleged offences punishable under Sections 465, 467, 468, 471, 420, 366(A), 120B of the Indian Penal Code; under Section 12 of the Indian Passport Act and under Section 66B of the Information Technology Act. It appears that after investigation, charge-sheet was filed as against the petitioner No.1's husband and petitioner No.2's father in the aforesaid C.R. Admittedly, no charge-sheet has been filed as against the petitioner Nos.1 and 2. It appears that during the course of investigation, the petitioners passports were seized. As the petitioner No.2 was desirous of studying abroad, the petitioners filed an application before the learned Judge for return of the passport, however, the same was rejected by the learned Additional Sessions Judge, Sewree, Mumbai (C.R. No.58). The said common order was passed below Exhibits – 48 and 49 on dated 15th November 2021. The ground for rejection of the petitioners application seeking return of their passport was on the premise that the allegation as

against the petitioner No.1's husband and petitioner No.2's father were serious, inasmuch as, he and other accused were involved in human trafficking. As noted above, the allegations are as against the petitioner No.1's husband and petitioner No.2's father.

7. Learned APP states that as there was no material as against both the petitioners i.e. petitioner No.1 and petitioner No.2, till date, charge-sheet has not been filed against them. The learned APP has not been able to show any material *qua* the petitioners.

8. It appears that the petitioner No.2 intends to go to abroad for her higher studies, for which she requires her passport. In the absence of any material *qua* the petitioners', the petitioners' passports seized during investigation, cannot be retained.

9. It is extremely unfortunate that the petition has been poorly drafted. Although two applications were filed by the petitioners i.e. the petitioner No.1 and petitioner No.2, a common petition has been filed on behalf of both the petitioners. Even otherwise, the petition is bereft of

certain details. In order to ensure that the advocate for the petitioners are careful in drafting the petition next time, it will be appropriate that some costs is imposed on the advocate for the petitioners.

10. Accordingly, the following order is passed:-

- i) The impugned order dated 15th November 2021, passed by the learned Additional Sessions Judge, Sewree, Mumbai (C.R. No.58) below Exhibits – 48 and 49 in Sessions Case No.171 of 2014, is quashed and set aside;
- ii) The DCB, CID, Unit-IX to forthwith return the passports of the petitioners, to enable the petitioners to renew their passports with the Passport Authorities;
- iii) The petitioners to produce the passport before the concerned Court, as and when directed, in connection with the case;

11. Learned Counsel for the petitioners to deposit costs of Rs.10,000/- with the Bar Council of Maharashtra and Goa, Mumbai, within one week from today.

12. Petition is accordingly disposed of on the aforesaid terms.
13. Registry to list the aforesaid petition on 9th March 2022 for recording compliance of the aforesaid deposit.
14. All concerned to act on the authenticated copy of this order

REVATI MOHITE DERE, J.