

Ghuge

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

CRIMINAL APPLICATION NO.1193 OF 2022

Nijal Navin Shah ... Applicant

V/s.

The State of Maharashtra and Anr. ... Respondents

Ms. Sonal Parab a/w Tanvi Sawant i/b Rajeev Sawant
Associates for the applicant.

Mr. D.P. Singh for respondent No.2.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 23, 2022

P.C.:

1. The applicant who is facing prosecution under Sections 406, 420, 120(b) read with 34 of the Indian Penal Code, 1860 had applied for relief of renewal of the passport before the learned Metropolitan Magistrate 31st Court, Vikhroli, Mumbai by the impugned order the learned Magistrate has rejected the application holding that the investigation is not complete; one of the accused is absconding; there shall chances of tampering of evidence.

2. Learned Advocate Mr. Yogesh Gandhi appears for respondent No.2 and copy of writ petition has been served on the advocate for informant.

3. Insofar as the prayer for renewal of passport is concern, it is well settled that the rights of person applying for renewal of passport are regulated by the provisions of passport Act. The learned Additional Sessions Judge had permitted the applicant to

travel United State of America from 17th July, 2017 to 11th August, 2019. There is no allegation that the applicant had breached the conditions imposed by the Court while granting permission to travel abroad.

4. In the facts of the case merely because the offence under Sections 406, 420, 120(b) read with 34 of IPC is pending against the applicant, the said fact by itself is not sufficient to deny the right of the applicant for renewal of the passport. There is no material on record to show that the applicant carries flight and risk. The applicant has immovable property at Mumbai. The applicant's son is working at Melbourne, Australia. In view of the Division Bench of Hon'ble High Court in the case of **Narendra K. Ambawani Vs. Union of India** W.P. No. 361 of 2014. The application for renewal of passport needs to be granted.

5. The learned Additional Sessions Judge while passing the order of release of applicant for pre-arrest Bail had imposed condition that the applicant shall not travel abroad without permission of this Court. Considering said condition, apprehension expressed by the investigating agency is uncalled for, as such apprehension is taken care of by conditions No.6 imposed in prearrest bail order.

6. In that view of the matter, the impugned order passed by the learned Metropolitan Magistrate, Vikhroli Court on Exh.1 in C.C. No.261/N/2022 dated 8th September, 2022 is quashed and set aside.

7. The respondent No.2 is directed not to reject the renewal of

passport granting on the pendency of offence against the applicant. However, respondent No.2 shall scrutinize eligibility of the applicant as required under the provisions of the passport Act, and shall pass order in accordance with law on application for renewal of passport of the applicant.

8. In spite of service of copy of petition on the advocate for the informant, none appears for.

9. The Criminal Application is disposed of in the above terms. No costs.

(AMIT BORKAR, J.)