

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3218 of 2019

Dattaji Jagtap

Vs

The State of West Bengal.

For the Petitioner : Mr. Sandipan Ganguly,
Mr. Dipanjan Dutt,
Ms. Sonia Nandi.

For the State : Mr. Abhra Mukherjee,
Mr. Dipankar Mahato.

Heard on : 14.03.2023

Judgment on : 30.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 19.08.2019 passed by the Learned Judge, 4th Special Court, Calcutta in Special Case No. 1 of 2016 arising out of New Market Police Station Case No. 127/2016 dated 09.03.2016 under Section 120B of the Indian Penal Code and under Sections 7 and 12 of the Prevention of Corruption Act, 1988 inter alia permitting the petitioner to travel outside the country only after framing of charge in the instant case.
2. The present revision has been preferred by the petitioner stating that he suffers from stage 4 prostate cancer which has spread to the bones, the successful treatment of which could not be arranged in India. In such circumstances, the petitioner is constrained to seek palliative care at medical facilities overseas, where advanced medical facilities exist. The petitioner is presently undergoing Hormone Replacement Therapy and injections have to be taken by the petitioner, without fail every 3 months. The petitioner is required to make regular trips overseas to Singapore, Dubai and other countries, where medical facilities are available in connection with his treatment, and any disruption to such requirement could prove fatal to the petitioner. For the purpose of treatment of the advanced stage of cancer from which the petitioner suffers the petitioner needs to travel to the United Kingdom as also the United

States America, to seek advance treatment available in those countries, which may yet keep the disease under remission and improve the outcome. The petitioner has now been advised by his family physician to make an appointment overseas with the concerned specialist for his further check up. That apart, the petitioner is required to travel abroad for earning his livelihood, as his work necessitates such travel.

3. That New Market Police Station Case No.127/2016 dated 09.03.2016, had been registered for investigation on the basis of a suo motu letter of complaint lodged by one Nadeem Akhtar, Sub-Inspector of Police, Special Task Force, Kolkata Police, with the Officer-in-Charge, New Market Police Station, alleging therein the commission of offence punishable under Sections 120B of the Indian Penal Code and under Section 7 and 12 of the Prevention of Corruption Act, 1988, against the petitioner and another accused namely Raj Pal Singh Kahlon.
4. The allegations leveled in the said complaint are inter alia to the effect that the petitioner and Raj Pal Singh Kahlon, entered into a criminal conspiracy and allegedly, the latter accepted illegal gratification and the petitioner aided and abetted the conspiracy by paying such illegal gratification and thereby offence under Section 120B of the Indian Penal Code and Section 7 and 12 of the Prevention of Corruption Act, 2012 is alleged to have been committed.

5. It is submitted that after completion of a purported investigation in New Market Police Station Case No. 127/2016 dated 09.03.2016 the investigating officer submitted Charge Sheet bearing no. 496/18 dated 31.12.2018, on 02.01.2019 before the Court of the Learned Judge, 4th Special Court, Calcutta (hereafter referred to as the “Learned Court”), in connection with Special Case No. 1 of 2016, under Section 120B of the Indian Penal Code and under Section 12 of the Prevention of Corruption Act, 1988 against the petitioner and, under Section 120B of the Indian Penal Code and under Section 7 and 12 of the Prevention of Corruption Act, 1988 against the other accused, namely Raj Pal Singh Kahlon.
6. The petitioner submits that he is completely innocent and in no way connected with the commission of the alleged offence or at all, and has been falsely implicated in the instant case.
7. The petitioner was arrested in connection with the instant case on 09.03.2016 and was subsequently released on bail, upon compliance of all formalities, vide order dated 11.04.2016 passed by the Learned Judge, 4th Special Court, Calcutta, wherein one of the conditions imposed was to the effect that the Petitioner must deposit his passport before the Learned Court. The petitioner had accordingly submitted his passport to the Learned Court.
8. Thereafter, on emergent occasions, the petitioner has filed applications before the Learned Judge, 4th Special Court, Calcutta, in

connection with the instant case, therein inter alia praying for return of the passport to the petitioner and for permission to travel abroad for extremely urgent health reasons. Such prayers were allowed after hearing the petitioner and the prosecuting agency.

9. At the time of release of the passport vide orders dated 23.12.2016, 06.05.2017, 22.08.2017 and on 03.11.2017, there has been no complaint regarding misuse of the liberty granted to the petitioner. The petitioner has returned back to India within the time permitted on every occasion and has never willfully flouted the orders passed by the Learned Court.
10. Pursuant to the order dated 03.11.2017, the petitioner has applied for Visa before the appropriate authorities, but the same was denied on account that the passport of the petitioner was due to expire within a span of six months. In such circumstances, the petitioner had filed an application before the Learned Court praying for permission to renew the passport in a routine manner. Vide order dated 18.11.2017, the Learned Court was pleased to permit the renewal of the passport of the petitioner in accordance with law.
11. It is submitted that the passport of the petitioner, bearing no. Z1779466 was then renewed for a period of 1 (one) year from 14.12.2017 to 13.12.2018 and a passport, bearing no. Z4641479 was issued to the petitioner. The petitioner, in terms of the leave granted

by the Learned Court vide order dated 03.11.2017, travelled to Dubai for medical purpose and duly returned to India on 24.12.2017.

12. It is submitted that the petitioner requires to travel to the United States of America and the United Kingdom, apart from Singapore and Dubai in connection with his health and treatment, and the stringent visa requirements for visits to the United State of America, etc., stipulate that the petitioner must be possessed of a passport with a period of validity extending at least six months beyond the itinerary of the petitioner. Such circumstances necessitate that the passport of the petitioner be renewed for a period of at least 10 years, to prevent fatal hardships from being caused to the petitioner as in the alternative, the petitioner cannot undertake any travel to these countries unless the residual period of validity of the passport of the petitioner is greater than 6 months. In course of the said renewal for the period of one year, the petitioner stood barred from travelling abroad for his treatment as also his livelihood as the Visa requirement, as to the validity of a passport was not satisfied, thereby affecting the health of the petitioner.

13. In such circumstances, the petitioner had prayed before the Learned Court for permission to renew the passport for a period of 10 years, whereupon by an order dated 06.04.2018, the Learned Court was pleased to direct that the Learned Court had no objection for further renewal of passport of the petitioner as per Passport Rules.

However, as no time period was mentioned in the said order, the Passport Authorities was pleased to renew the passport of the petitioner only for a year, i.e. from 01.05.2018 to 30.04.2019, in terms of the Notification No. GSR 570 dated 25.08.1993 published by the Central Government, and a passport, bearing no. Z4939814 was issued to the petitioner.

14. In course of the said renewal for a period of one year, the prospect of a rerun of the earlier difficulty of securing a visa stared at the petitioner and stood in the way of the petitioner travelling abroad for his treatment as also his livelihood, as the Visa requirements of the period of validity of a passport was not satisfied, thereby affecting the health of the petitioner.
15. It is humbly submitted that after the first six months period of validity of a passport, the passport is unusable for the remaining six months, as in view of its expiry within the next six months, the authorities do not provide the visa necessary for travel.
16. It is further submitted that in practice, obtaining medical appointments within the early part of the first six months of the validity of a passport and the conclusion of the resultant medical process prior to the expiry of the first six months of the validity of passport, has never materialised. In such circumstances, the petitioner has been deprived of the latest health care which is only available in the United States of America and the United Kingdom,

apart from Singapore and Dubai. In view of difficulties as aforesaid, in respect of a passport with the validity of only one year, the petitioner could not travel overseas for medical treatment during the period from May 2018 to April 2019.

17. That faced with such prospects, the petitioner made an application praying for a specific direction to renew the passport for a period of 10 years, whereupon by order dated 05.09.2018, the Learned Court was pleased to reject the same, on the ground that the said application amounted to a review/recall application of the earlier order dated 06.04.2018, which the Learned court had no power to entertain as a subordinate criminal court in terms of the Code of Criminal Procedure, 1973.

18. Subsequently, the period of validity of the passport of the petitioner expired after 30.04.2019, and in such circumstances the petitioner filed another application before the Learned Court therein praying for a direction upon the Passport Authority that the passport of the petitioner be renewed for a period of at least 10 years. The said application came up for hearing before the Learned Court on 19.08.2019, when by an order of even date, the Learned Court was pleased to dispose of the said application without a direction upon the Passport Authority that the passport of the petitioner be renewed for a period of 10 years but was pleased to pass a direction permitting

the petitioner to travel outside the country only after framing of charges in the instant case.

19. Subsequently, under emergent medical circumstances adversely affecting the health of the petitioner, which necessitated the travel abroad of the petitioner for urgent medical care, the petitioner had made an application to the passport authorities for renewal of the passport for a year, and passport was issued to the petitioner, bearing no. T8001802, valid for the period from 13.09.2019 to 12.09.2020.
20. The petitioner then made an application under the Right to Information Act to the Passport Authority seeking information as to why passport was not issued for a period of 10 years. In reply thereto, the Regional Passport Office, has sent a communication with Ref No. RPO/Mum/f-7(9)/19-299 dated 17.10.2019 mentioning Govt. of India Notification vide G.S.R. 570 (E), wherein it has been specified vide clause (a) (ii) that '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'.
21. It is submitted that the Learned Court erred in failing to consider that in terms of the Notification No. GSR 570 dated 25.08.1993 published by the Central Government, read with the provisions of Rule 12 of the Passport Rules, the Learned Court is

possessed of the powers to permit the renewal of the passport of the petitioner at least for a period of 10 years, in accordance with law.

22. The impugned part of the order passed by the Learned Court, is arbitrary, unreasonable and contrary to the interest of justice. In such circumstances, the said order is liable to be modified.

23. **Mr. Sandipan Ganguly, learned senior counsel for the petitioner** has submitted that the impugned order passed by the Learned Judge, to the extent it disposed of the said application without a direction upon the Passport Authority that the passport of the petitioner be renewed for a period of 10 years and, to the extent it restricts the petitioner from travelling outside the country prior to framing of charge in the instant case, is a glaring example of an abuse of the process of court.

24. It is also submitted that it is apparent that the impugned order while gravely prejudicing the legitimate health interests of the petitioner, has been passed without application of judicial mind to the facts of the instant case and the applicable law thereto and the order passed by the Learned Court, is arbitrary, unreasonable and contrary to the interest of justice. In such circumstances, the said order is liable to be modified by this Hon'ble Court, with a direction upon the Passport Authority to renew the passport of the petitioner for a further period of 10 years and the petitioner be permitted to

travel outside the country, without being restricted to travel outside the country only after the framing of charges in the instant case.

25. It is submitted that the impugned part of the order is otherwise bad in law and as such the same is liable to be set aside.

26. **Heard the learned counsel for the State Mr. Abhra Mukherjee and Mr. Ganguly for the Petitioner. Perused the materials on record. Considered.**

27. **The following facts are before this court from the materials on record:-**

- i) The case is dated 09.03.2016.
- ii) The petitioner is aged 79 years and is suffering from a terminal disease.
- iii) He has been permitted to go aboard by the Trial Court for treatment on conditions that he has not violated.
- iv) Difficulty faced by him is in respect of renewal of his passport which in such cases is being renewed only for one year at a time as per rules, which is not permitting him to get visa to go for treatment as the time period is very limited and specific for getting a visa.
- v) The offence alleged is under Section 120B Indian Penal Code and Section 7 and 12 of Prevention of Corruption Act, 1988 in respect of the petitioner and another accused Shri Raj Pal Singh Kahlon, the then Chairman of Kolkata Port Trust.

28. The following Judgments have been relied upon in support of the petitioner's case:-

- I) Rajendra Kumar Saraf vs Union of India, Writ Petition No. 5490 of 2021, on 7th March 2022.
- II) Mr. Samip Nitin Ranjani vs Union of India and Ors., 2016 SCC OnLine Bom 14539, Writ Petition No. 12784 of 2016, on November 30, 2016.
- III) Narendra K. Ambwani vs Union of India and Ors., 2014 SCC OnLine Bom 356, Writ Petition No. 361 of 2014, on March 13, 2014.

29. The petitioner in the present case has prayed for an order permitting the renewal of his passport for a period of 10 years

30. The Supreme Court in **Vangala Kasturi Rangacharyulu vs Central Bureau of Investigation, Criminal Appeal No(s). 1342 of 2017, on 29.09.2021**, held:-

“Section 6.2 of the Passports Act, 1967 reads as follows:

x x x x x x x x x

(2) 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 following grounds, and on no other ground, namely: -

- (a) that the applicant is not a citizen of India;*
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;*
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;*

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.

Admittedly, at present, the conviction of the appellant stands till the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of."

31. In the present case Charge Sheet has been submitted.

32. The petitioner is aged 79 years and suffering from a terminal disease. He has not violated the permission granted to him earlier by the court to travel abroad for treatment.
33. Considering the said facts and circumstances, the order under revision dated 19.08.2019 in Special Case No. 1 of 2016 arising out of New Market Police Station Case No. 127/2016 dated 09.03.2016 under Section 120B of the Indian Penal Code and Under Sections 7 and 12 of the Prevention of Corruption Act, 1988 pending before the learned Judge, 4th Special Court, Calcutta is set aside in the interest of justice.
34. **The passport authorities shall renew the petitioner's passport for a period of five (5) years subject to compliance of all conditions/rules as required under the passport act, within a period of one month from the date of this order.**
35. **The petitioner shall not leave the country without the prior permission of the Court before which the case shall be pending either in trial or appeal and shall comply with the directions/conditions of the court and the passport authorities as required under the rules.**
36. **CRR 3218 of 2019 is allowed.**
37. There will be no order as to costs.
38. All connected Application stand disposed of.
39. Interim order if any stands vacated.

40. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
41. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)