

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1384 OF 2023

Vivek Suresh Narang .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr. Sanjog Parab, Sr.Avdocate a/w Mr. Mohan Rao, Ms. Sulabha Rane and Ms. Sakshi Baadkar for the Petitioner.
Mr. S.K. Halwasia, for respondent no.3
Ms. P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 26th APRIL 2023

P.C:-

1 The Petitioner, who is employed as a Senior Software Engineer at Wayfair LLC since 2018 and residing in USA since 2010, is aggrieved by an order passed by the 27th Metropolitan Magistrate's Court on 10/4/2023, on his application, seeking no objection in extending the validity of his passport bearing No. W4839822.

 The aforesaid application was necessitated in the backdrop of the fact that the petitioner is arraigned as an accused in CR No. 358 of 2019 registered by his wife Kiran Narang and Section 498 A read with Section 34 of IPC has been invoked.

 In the wake of the pendency of the subject FIR, and in terms of the notification of the Ministry of External affairs

dated 25/08/1993, where the exemption has been granted to the citizens of India from operation of Section 6(2)(f) of the Passport Act 1967, by providing that if they produce orders from the “Court concerned” permitting them to depart from India and in such a contingency the travel abroad may be permitted, subject to certain conditions.

2 In the wake of the aforesaid requirement in law and in the background facts, the petitioner preferred an application before the Magistrate on 31/03/2023, where he clearly asserted that his passport is about to expire on 23rd September, 2023 and he had preferred an application for it’s renewal in the Indian Embassy in New York, wherein a specific query was responded, about pendency of any criminal proceedings. Pertinent to note that for the purpose of renewal of his passport, he had to visit India and he approached the Sessions Court seeking an interim protection from arrest and an order is passed in his favour, conferring such a protection.

3 In terms of the requirement of seeking ‘No objection’ from the concerned Court, he moved an application, with a specific prayer for grant of “No objection” for renewal of his passport under the Passport Act and the relevant rules for the full period as provided in Rule 12.

This application came to be rejected on 10/4/2023 and the order passed by the Metropolitan Magistrate reads thus:

“As per the directions of Hon’ble High Court, Mumbai, case reported in Criminal Application No.1193 of 2022 Nijal Navin Shah V/s. The State of

Maharashtra and Anr., this court has no power to issue any directions as per the case law. As per the case law, the Passport Authority Act should follow and comply. Hence, order.

Application is rejected.”

4 Heard the learned Senior counsel Mr. Parab for the petitioner and the learned counsel Mr. Halwasia for the respondent no.3.

A copy of the order, in case of *Nijal Navin Shah vs. State of Maharashtra and Anr*, (Criminal Application No.1193/2022), which is the foundation of the impugned order, passed by the learned Magistrate is placed before me. Based on this order, the Magistrate has recorded that he has no power to issue any directions, as the Passport Authority should follow and comply the law.

5 I have gone through the order of 23/12/2022 passed by the learned Single Judge (Amit Borkar, J) in Criminal Application No.1193 of 2022.

On it's entire reading, I must express that the Magistrate has misconstrued the said order and it is not known that on what basis he derived the conclusion, recorded in the impugned order, where he hold that he has no power to issue any directions.

6 The Division Bench of this Court in case of *Capt. Amol Vasant Kelkar Vs. Union of India and ors*, (Criminal Writ Petition No. 234/2020) had an opportunity to deal with the

provisions of Section 6(2)(f) of the Passport Act as well as the notification issued by Ministry of External Affairs on 25/08/1993, carving out a specific plea for exempting citizens of the Country from the embargo created under Section 6(2)(f) and in the case in hand, when the 'No objection' was granted by the Magistrate limiting it for a period of 2 years as a case was registered against the petitioner, where he faced accusations under Section 406 and 498-A read with 34 of IPC, the writ petition was allowed and the Registry was directed to renew the passport for a period of 10 years, subject to the petitioner satisfying the other requirements of law.

7 The provisions of the Passport Act, when carefully perused, and in particular Section 6, which adumbrate the contingencies, when the passport authority is entitled to refuse endorsing the passport for visiting any foreign country, and in specific sub clause (f) of section 6 sub-section (2), which provide, one such contingency being, proceedings in respect of an offence alleged to have been committed by the applicant, are pending before the criminal court in India.

This being one of the ground, when the passport authority would refuse an endorsement of visiting a foreign country, clarification is offered by the notification, issued by the Ministry of External Affairs by stipulating that if, the No Objection/necessary permission is granted by the concerned court, where the case is pending, in that case, the bar created under Section 6(2)(f) shall not come into operation.

8 This being the clear position of law, surfacing through the reading of the statutory provision and the notification issued by Ministry of External Affairs, and particularly when the decision in case of Nijal Navin Shah (supra), do not take any view contrary to the statutory provision and the notification, the order passed by the Magistrate cannot be sustained.

 In fact, if the Magistrate ought to have carefully read the order, on which he placed reliance, where it is evidently clear that this court had directed the passport authority not to reject the renewal of the passport only on the ground of pendency of an offence. In any case, the eligibility of the applicant for obtaining or for renewal of passport is to be determined by the Passport Authority and what is contemplated at the hands of the concerned court is only a 'No objection' for grant of, or for renewal of the Passport and nothing more than this.

 In the wake of the above, since the impugned order passed by the Magistrate suffers from grave infirmity and since it exude from reading of the order of this Court, in case of Nijal Navin Shah, it deserve to be set aside and is accordingly set aside.

9 While the order is being set aside, the Metropolitan Magistrate, Mumbai, is directed to pass an order upon the application filed by the applicant, seeking No Objection for extending the validity of his passport expeditiously.

10 Upon the order being set aside, the petitioner is permitted to file a fresh application before the Magistrate,

seeking No objection for extending the validity of his passport and on the application being filed within a period of 3 days from today, it shall be expeditiously decided by the Magistrate, not later than 10 days of it's filing, by taking into account the aforesaid observations and by an effective reading of the government notification as well as the order in case of Nijal Navin Shah.

Upon the order being passed, the learned Magistrate is also directed to make the copy of the order available within a period of next three days.

Needless to state that the application shall be decided as per the prevailing rules.

11 With the above direction, Criminal Writ Petition stand disposed off.

(SMT. BHARATI DANGRE, J.)