

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

CRIMINAL WRIT PETITION NO. 3017 OF 2023

Jigna Jitendra Vora ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. M. K. Kocharekar i/b Mr. Husayn Kopty for the Petitioner

Mr. K. V. Saste, A.P.P for the Respondent No.1-State

Mr. Dashrath Dube a/w Mr. Rupesh Dubey and Mr. Upendra
Lokegaonkar for the Respondent No. 2

Mr. Pradip D. Gharat, Spl. P. P. for the Respondent No.3-UOI

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
MONDAY, 25th SEPTEMBER 2023**

P.C :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner seeks quashing of the
impugned letters dated 20th March 2020 and 20th October 2020

issued by the respondent No. 2 i.e. the Regional Passport Office, Mumbai. There is also a prayer seeking direction to the respondent No. 2 to consider petitioner's application seeking issuance of passport, afresh.

3 Learned counsel for the petitioner submits that the petitioner had applied for issuance of passport, however, her application was rejected by the respondent No. 2 i.e. the Regional Passport Office vide letters dated 20th March 2020 and 20th October 2020. He submits that the reason spelt out in the letter dated 20th March 2020 is, that the CBI informed them that "the case matter is still pending in the CBI and hence, her (petitioner's) file should not be cleared till the matter ends".

4 Mr. Kocharekar, learned counsel for the petitioner submits that there was no proceeding pending before the CBI Court nor before the High Court, for the CBI to send such a remark to the respondent No. 2. He submits that the petitioner

having been acquitted on merits by the trial Court, which Judgment and Order was confirmed by the High Court, there was no proceeding pending before any Court and as such, the respondent No. 2 could not have refused to issue passport to the petitioner. He submits that even the CBI's stand that the case was pending before the CBI, is contrary to the record, inasmuch as, there is no proceeding pending against the petitioner.

5 Learned counsel appearing for the respondent No. 2 i.e. the Passport Authority submits that on receipt of a report from the CBI stating therein, that the matter is pending before the CBI and that the file should not be cleared, the petitioner's file seeking issuance of passport, came to be closed. He submits that it is open for the petitioner to re-apply for fresh passport, since her earlier application has been closed, in view of the CBI Report.

6 Mr. Gharat, learned Special Public Prosecutor appearing for the respondent No. 3-CBI, submits that the

petitioner's application seeking issuance of passport, could not have been entertained by the respondent No. 2, as the petitioner had failed to furnish surety within six months from the date of the Judgment and Order of acquittal under Section 437A of the Code of Criminal Procedure (`Cr.P.C'). He submits that as the petitioner failed to furnish surety, the petitioner has now made herself liable for an offence under Section 176 of the Indian Penal Code (`IPC').

7 Perused the papers. The petitioner was arrayed as accused No.11 in an MCOC case, being Special Case No. 7/2012. The sections for which the petitioner was prosecuted alongwith other co-accused were offences punishable under Section 302 and other Sections of the IPC as well as Section 3(25) of the Arms Act; under Sections 3(1)(1), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act; and under Sections 37(1)(a) and 135 of the Maharashtra Police Act.

8 After a full-fledged trial, the petitioner came to be acquitted of all the offences by the learned Special Judge, Mumbai, vide Judgment and Order dated 2nd May 2018. In para 13 of the said Judgment and Order dated 2nd May 2018, the petitioner was *inter alia* directed to execute the PR bond of Rs.50,000/- with one surety in the like amount under Section 437A of the Cr.P.C, for a period of six months, in order to enable her to appear before the High Court, in the event, an appeal or a petition is filed against the Judgment and Order of acquittal. The bail bond was to be in force for six months. It is not in dispute that the petitioner executed a PR Bond for Rs.50,000/- on 2nd May 2018, however, sought time to furnish surety bond, as directed by the learned Special Judge. The learned Special Judge was pleased to extend the time to furnish the surety bond. Admittedly, the surety bond was not furnished, although, PR bond was furnished by the petitioner.

9 It is not in dispute that in the interregnum, the CBI filed an appeal against the acquittal of the petitioner in this Court, challenging the Judgment and Order of acquittal of the petitioner. On 7th March 2019, the said appeal against acquittal was filed by the CBI. On 18th March 2019, notice was issued to the petitioner in the said appeal filed by the CBI and on 27th August 2019, leave to file appeal against the acquittal of the petitioner, was rejected by this Court. The said order is at Exhibit `C' at page 64. Admittedly, the said order of the High Court confirming the Judgment and Order of acquittal passed by the trial Court, has not been challenged by the CBI before the Apex Court.

10 Pursuant to the aforesaid, the petitioner filed an application seeking issuance of passport before the respondent No. 2-Authority. The respondent No. 2, on receipt of a report from the CBI, stating therein, that the 'case matter is still pending

in the CBI and that file should not be cleared’, closed the file of the petitioner. The same was informed to the petitioner vide letter dated 20th October 2020. It appears that the petitioner thereafter filed an application before the Special Judge for a declaration that it is not necessary to file surety bond as per the Judgment and Order dated 2nd May 2018, for the reasons spelt out in the application. The said application was filed on 2nd March 2022. It appears that the CBI opposed the said application on the ground that the period to furnish the surety had expired and that the petitioner had within the said period, not furnished surety and as such, had made herself liable for an offence. The said application was rejected by the learned Special Judge vide order dated 12th April 2023, after observing in para 6 as under :

“6. Heard both parties. Perused application and say. Upon perusal of Section 437-A Cr.P.C. it is seen that the accused shall execute bail bonds with surety to appear before the higher Court and these bail bonds shall be in force for six months. The provision is very much clear. Now the contention of the applicant that after the lapse of period of six months and after disposing of the appeal by the Hon’ble High Court, it be declared that it is not

necessary to furnish bail bonds. If the contention of the applicant is considered vis-a-vis with the Section 437-A, then also it cannot be said that six months period is mentioned in respect of furnishing of the surety. On the contrary, as per the said section the bail bonds shall be in force for six months. It is the period of validity of such bail bonds. Moreover, this Court has no power to give declaration in this regard and therefore the application is devoid of merit and needs to be rejected. Hence, the following order.

ORDER

Misc.Application (MCOC) No. 399 of 2023 is rejected.”

11 It is not in dispute that the petitioner had furnished PR Bond and in the interregnum, the CBI had challenged the Judgment and Order of her acquittal, and the petitioner had appeared before the High Court and this Court, after hearing the respective parties, had dismissed the appeal filed by the CBI.

12 As noted above, the said order confirming the Judgment and Order of acquittal, has not been challenged by the CBI. It is pertinent to note that the purpose of Section 437A Cr.P.C is to enable the Court to execute bail bonds with surety

from the accused, so as to enable them to appear before the High Court as and when the Court issues notice in respect of any appeal or petition filed against the judgments of the respective Courts. Under Section 437A, the bail bonds are to remain in force for six months as per sub-section (2) of Section 437A and if the accused fails to appear, the bail bond shall stand forfeited under provision under Section 446 would thereafter apply. Section 446 deals with the procedure when bond has to be forfeited.

13 From the facts as narrated aforesaid, it is evident that the petitioner had indeed furnished PR Bond as directed by the Court and the trial Court had extended time to furnish surety. In the interregnum, CBI had filed an appeal against the petitioner's acquittal and that the petitioner had appeared before the High Court, pursuant to the notice and subsequently, after hearing the parties, had rejected CBI's application seeking leave to file appeal.

14 In these circumstances, there was no justification for the CBI to give a report as given by the CBI to the respondent No. 2. The object of Section 437A is to secure the presence of an accused before the higher forum, after the acquittal. The petitioner had infact furnished PR Bond of Rs. 50,000/- before the trial Court. In the present case, the petitioner infact, appeared before the High Court, pursuant to the notice issued in the appeal filed by the CBI. In these circumstances, the CBI ought to have been fair and ought to have accordingly given a report, instead of stating that the case matter is still pending in CBI and her file should not be cleared, when infact, there was no proceeding pending before any Court of law, at the relevant time. Neither has the learned counsel for the CBI been able to point out, what were the proceedings which were pending before the CBI at the time when such a report was forwarded to the respondent No. 2-Authority. Therefore, the report given by the CBI to the respondent No. 2 was clearly contrary to what had really taken place.

15 We, in the facts, express our displeasure at the conduct of the CBI in sending a letter to the respondent No. 2 – Regional Passport Office, on which reliance was placed by the respondent No. 2, in its letter dated 20th March 2022.

16 Accordingly, the petition is allowed in terms of prayer clause (c).

17 Since the petitioner's earlier application seeking issuance of passport has been closed, we grant liberty to the petitioner to apply afresh for issuance of fresh passport. If an application is made for issuance of fresh passport, the respondent No. 2 to issue the same in accordance with law under the Passport Act and its Rules and keeping in mind what is stated aforesaid in this order. The application, if filed, be considered expeditiously.

18 All concerned to act on the authenticated copy of this
order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.