

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

CRIMINAL APPLICATION NO. 1183 OF 2023

Vishal Kotian

..Applicant.

Versus

State of Maharashtra

..Respondent

Mr. Sandeep R. Karnik a/w. Rohan V. Bhosle for Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 6 OCTOBER 2023

PC :

1. Leave to amend. Amendment to be carried out forthwith.
2. The Applicant is aggrieved by the condition imposed on the applicant by the Metropolitan Magistrate, 13th Court, Dadar, Mumbai, in his order dated 11.04.2023 passed in Misc. Application No.446-Misc/2023. The said application was for issuing no objection for renewal of the passport for 10 years. His passport was to expire on 06.08.2023.
3. The applicant is an accused in C.R.No.7 of 2018 registered at R.A.K. Marg police station, under sections 279, 337 and 338 of the I.P.C. The applicant was already released on bail in

the year 2018 itself. By the impugned order, the learned Magistrate issued no objection for renewal of the passport for 10 years and directed the Passport Authority to renew the passport for 10 years from the date of expiry of the passport as per rules. The applicant is aggrieved by the 3rd condition which restricts the applicant from leaving India without prior permission of the Court.

4. Heard Shri. Sandeep Karnik, learned counsel for the Applicant and Shri. Yadav, learned APP for the State.

5. Learned counsel for the applicant submitted that, all these offences are bailable and neither the Court nor the police officers can impose any condition while releasing the applicant on bail. Learned counsel relied on the Judgment of this Court in the case of *Sultan Kamruddin Dharani Versus Union of India; Deputy Director, DRI, Mumbai and the State of Maharashtra*¹. He submitted that, since the offences are bailable, such condition cannot be imposed.

6. Learned APP did not seriously object deleting that particular condition.

1 2008 SCC OnLine Bom 1347

7. I have considered these submissions. As rightly submitted by learned counsel for the Applicant, the aforesaid Judgment is squarely applicable to the facts of the present case. In the case of ***Sultan Dharani*** (supra) also the objection was for imposing the condition of depositing the passport and not leaving India without prior permission of the Court; in case of bailable offences. The relevant ratio is in paragraph-19 which reads thus:-

“19. Thus, the position of the law is that a person who is alleged to have committed a bailable offence has an unfettered and absolute right to be enlarged on bail and the Court or the Police Officer concerned, as the case may be, has no discretion to grant or refuse bail. Subject to first proviso to sub-section (1) of section 436 of the Code of 1973, the Court may modulate the condition of bail as regards the bail amount and the number of sureties. However, the Court cannot impose a condition which is not a term as to the bail. The condition of requiring a person accused of a bailable offence to surrender his passport to the Court is not a term as to bail. If in such a case a condition is imposed that bail is granted subject to condition of deposit of passport, such a condition will defeat the absolute right of the accused under section 436(1) of the said Code to be set at liberty. In the circumstances, while enlarging the Petitioner on bail in a bailable offence, the learned Magistrate has no jurisdiction to direct deposit of the passport. The Magistrate cannot impose a condition while granting bail in a bailable offence of not leaving India without the permission of the Court. Whenever the Petitioner is enlarged on bail, he is bound to attend the concerned Court on the date fixed or whenever he is called upon to do so. This obligation

is created by the bail bond. If he desires to remain absent, he will have to seek an exemption from the Court. In a given case if there is an apprehension that the accused is likely to abscond, steps can also be taken under the appropriate provisions of law. Steps can be also taken for impounding the passport.

8. Considering that the said ratio is squarely applicable to the present facts of the case, the 3rd condition imposed by the Metropolitan Magistrate in the order dated 11.04.2023 is untenable and has to be set aside.

9. Hence, the following order:

ORDER

- i) The order dated 11.04.2023 passed by the Metropolitan Magistrate, 13th Court, Dadar, Mumbai, in Misc. Application No.446-Misc/2023, is modified and the 3rd condition imposing restriction on the applicant leaving India without prior permission of the Court, is set aside.
- ii) Rest of the order passed by the Metropolitan Magistrate is maintained as it is.
- iii) With this observation, the Application is disposed of.

(SARANG V. KOTWAL, J.)