

GRM

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

CRIMINAL APPLICATION NO. 1351 OF 2022

Kaushik Hasmukh Gandhi ... Applicant

V/s.

The State of Maharashtra ... Respondent

Ms. Mallika Ingale, Adv. for the Applicant.

Mr. Arfan Sait, APP for the State/Respondent.

API Mushtaque Khan (E.O.W.).

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 30, 2023

P.C. :

Heard.

2. The challenge in this application is to clause no. iv of the order dated 21/09/2022 passed by learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C. No. 2710/Misc/2022.

3. The applicant is one of the accused in C.C. No. 725/PW/2018 arising out of C.R. No. 70 of 2014 registered by Economic Offences Wing (for short “E.O.W.”), Unit-III for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471, 477(a) & 120(b) read with 34 of the Indian Penal Code, 1860. He was granted bail *inter-alia* on the condition of surrendering his passport to the Investigating Officer, E.O.W.

4. The record indicates that the applicant later on, was permitted to go abroad. To facilitate his foreign visit, the E.O.W. was directed to return the applicant, his passport.

5. The record further indicates that learned Additional Chief Metropolitan Magistrate vide order dated 03/05/2019 allowed the application preferred by the applicant for return of his passport back with a specific order, which reads thus,

“ORDER

- i. Application is allowed.
- ii. The Economic Offences Wing, Unit-I, Mumbai shall return the passport bearing no. K6737864 to the accused Mr. Kaushik Gandhi on due verification and identification.
- iii. Accused/applicant shall not misuse his passport.”

6. The applicant then moved an application seeking permission for renewal of his passport for a period of 10 years. The said application was allowed with a direction to the Passport Authority to renew the passport of applicant/accused in accordance with the Rules.

7. By very order, the applicant was directed to surrender his passport after it was renewed. This direction to surrender the passport of applicant to the Investigating Officer after its renewal, is under challenge herein.

8. Learned APP has strongly objected to allow the application.

According to him, the applicant is involved in a serious offence. He supports the impugned order.

9. The record indicates the applicant to have not mis-used the liberty or conditions imposed while granting him bail. He was permitted to visit the foreign countries 2-3 times. Vide order dated 03/05/2019, the E.O.W., Unit-I, Mumbai was directed to return to the applicant, his passport. The said order has not been challenged. As such, clause no. iv of the impugned order dated 21/09/2022 directing the applicant to surrender his passport to the Investigating Officer on its renewal, amounts to review of the order dated 03/05/2019.

10. Needless to mention that Section 362 of the Code of Criminal Procedure, 1973 doesn't allow the review of the order. Moreover, it is reiterated that the applicant has not mis-used the conditions of his bail.

11. In view of the same, this Court is inclined to allow the application.

12. The application is therefore allowed in terms of prayer clause (b), provided the applicant shall not leave India without permission of the Trial Court.

(R. G. AVACHAT, J.)