

Nikita

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

WRIT PETITION NO.230 OF 2023

Bhavjit N. Vaishnav & Anr.

... Petitioners

V/s.

Union of India & Ors.

... Respondents

Mr. Amogh Singh i/b Jeet Gandhi for the Petitioner.

Mr. S.K. Halwasia a/w M.M. Nasiri for Respondent
No.1 and 2.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 19, 2023

P.C.:

1. The challenge in this petition is to the order dated 11th April 2022, passed by Additional Chief Metropolitan Magistrate 38th Court, Ballard Pier, Mumbai in CC No.20/N/2022 direction Regional Passport Authority to renew the passport of petitioner for one year.

2. The petitioner has therefore challenged the order contending that Rule 12 of Passport Rules 1980, requires that ordinarily passport shall be granted for period of 10 years. The exercise of such power by the Court restricting period of 10 years to one year needs to be supported by cogent reasons. The nature and gravity of offence alleged against the petitioner may be a relevant fact

however in the facts of the case considering nature of offence, i.e., under Section 499 and 500 of Indian Penal Code, 1860, the Court ought to have directed the authority to renew the passport for period of 10 years.

3. The learned advocate for the respondent No.1 submitted that the Magistrate has rightly passed an order directing renewal of passport for period of one year.

4. The learned advocate for respondent No.5 was heard on earlier occasions and she objected for grant of relief in favour of petitioner. Today, the petition was fixed for further arguments however in the morning session the learned advocate for respondent No.5 remained absent. Even in the afternoon session she remained absent. On being communicated about the matter kept at 2.30 PM, by the advocate for the petitioner she showed her inability to attend the Court.

5. The Division Bench of this Court in the Case **Narendra K. Ambwani Vs. Union of India and Ors.** reported in 2014 SCC OnLine Bom 356 while directing the passport Officer to extend validity of passport for period of 10 years issued following directions:

“11. Accordingly we issue following directions:-

(a) In all cases where the Magistrate's court directs renewal of the passports under the Rules, the Passport Rules, 1980 shall apply and passports other than for a child aged more than 15 years shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for at least ten years.

The Regional Passport Office shall renew the passports of such qualifying applicants atleast for ten years.

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said Notification No. G.S.R. 570(E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned.”

6. The learned advocate for the petitioner invited my attention to the judgment in the case of **Captain Amol Kelkar Vs. Union of India** in Criminal Writ Petition No.234 of 2020 decided on 8th March 2021. The Division Bench was considering question as to whether prayer of the petitioner for grant of renewal of his passport by 10 years can be granted or not. Considering the notification dated 25th August 1993 issued in exercise of power under Section 21 A of Passport Act, 1967 the Division Bench of this Court directed the passport authority to renew the passport of the petitioner for period of 10 years. Offence registered against the petitioner was under Section 406, 498 read with Section 34 of Indian Penal Code.

7. In the facts of present case, except offence under Section 499 and 500 of the Indian Penal Code 1860 there are no offenses registered against the petitioner. Considering the nature of offence

registered against the petitioner, in my opinion, the learned Magistrate ought to have assigned reasons as to why period of renewal of passport has been restricted to one year instead of 10 years. The petitioner has stated on oath that validity of one year passport is causing grave prejudice to the petitioner in prosecuting visa to travel Abroad and to meet their son residing in abroad.

8. Considering the nature of offence registered against the petitioner, the judgment of this Court in the case of **Narendra K. Ambwani** (supra) and **Captain Amol Vasant Kelkar** (supra), the petitioner has made out a case for grant of relief. Hence, following order:

9. The impugned order dated 11th April 2022 is modified to the extent of prayer clause (b). The said order is substituted by following order:

10. The respondent No.2 is directed to renew the passport of petitioners for a period of 10 years, subject to the petitioner satisfying other requirements as per the said Act and the Rules framed thereunder.

11. The writ petition is disposed of in above terms.

(AMIT BORKAR, J.)