



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 632 OF 2024

IN

CRIMINAL APPEAL NO. 382 OF 2016

Vishnu Kondiram Mitkar
Age 48 years, Occ: Agril.
R/o. Paithan, Taluka Paithan,
Dist. Aurangabad.

... Applicant

Versus

1. The state of Maharashtra
(At the instance of MIDC Paithan
Police Station, Dist. Aurangabad.

2. The Union of India.

... Respondents.

....

Mr. A. K. Bhosle, Advocate for the Applicant.

Mr. S. M. Ganachari, APP for Respondent No.1-State.

Mr. A. G. Talhar, Deputy Solicitor General of India for Respondent
No.2-UOI.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.02.2024

Pronounced on : 26.02.2024

ORDER :

1. Vide instant application, the applicant raised the following
prayers:

(A) The Application may kindly be allowed.

(A-1) The applicant may kindly be allowed to obtain passport.

(B) That, the Applicant may kindly be allowed to travel abroad on certain conditions.

(C) Any other relief, to which the Applicant may be found entitled to, under the law and in the interest of justice, be kindly granted.

2. Briefing this court about the background of the application, it is pointed out that against the judgment and order of conviction dated 30.05.2016, the applicant, along with other convicts, has preferred Criminal Appeal No. 382 of 2016 and the same is pending herein. It is further submitted that applicant and his family are planning a foreign tour i.e. visit to Malaysia and Singapore. However, he needs to apply for passport to fly abroad. That, for application, in view of the format, applicant is required to seek permission of this court as above criminal appeal is pending. That, such requirement is reflected in the passport application. That, there is a Government Notification and office memorandum issued the Government of India which necessitates order of this court. Learned counsel pointed out that for above reasons, relief as prayed be granted to enable applicant to accompany his family abroad.

3. In support of relief, learned counsel for the applicant has placed on record the Government Notification dated 25.08.1993 issued by Government of India, Ministry of External Affairs, New Delhi, which reads as under:

“ G.S.R. 570(E).- In exercise of powers conferred by clause (a) Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :-

(a) The passport to be issued to every such citizen shall be issued-

- (i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or
- (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;
- (iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.”

4. Learned counsel for the applicant has further placed reliance on the Office memorandum dated 10.10.2019 issued by Government of India, Ministry of External Affairs, PSP Division which deals with the subject of issue of passports to applicants against whom criminal cases are pending before a court of law in India. Clause (3) and clause (5) (ii) of the said office memorandum reads as under:

“3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6(2) of the Passports Act, 1967. Section 6(2)(f) of the Act states

that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570(E) dated 25.08.1993 was introduced to give relief to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity or for the period specified by the Court.

4.

5 In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(i) ...

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a note clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected."

5. Mr. A. G. Talhar, learned DSGI, appearing on behalf of the passport issuing authorities, fairly conceded that there is no hurdle in granting relief as prayed.

6. Resultantly, there is no hurdle at this stage as mere prayer is for applying to the passport authorities for issuance of passport.

7. As criminal appeal is *sub judice* and pending, the applicant would be required, at proper stage, to place on record the itinerary containing details of countries proposed to be visited, address of the proposed stay and contact numbers of applicant and his family prior to leaving the country for said short tour abroad.

8. In view of the above, I proceed to pass the following order :

ORDER

- I. The application is allowed.
- II. The applicant is allowed to apply for passport.
- III. The passport authorities to consider the application of applicant and if found eligible as per Rules, issue passport to the applicant.

[ABHAY S. WAGHWASE, J.]