

Digitally signed
by RUPALI
RAJESH
WAKODIKAR
Date:
2024.03.21
15:37:54 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 143 OF 2024

Thameem Ansari Sayed Mubarakali
Age : 38 years, Occ.: Businessman
R/a: 13/16, 23B, Hadayana Hajiya Street,
2nd Line, Nagai, District – Nagore
Nagapattinam, Tamil Nadu – 612 002. ...Petitioner

Versus

1. The Union of India
Through the Ministry of Home Affairs
2nd Floor, Exchange Building,
Gulam Marg, Ballard Estate,
Mumbai – 400 001.

2. The Central Bureau of Investigation
Banking Securities Fraud Branch,
C-35/A, G-Block, Bandra Kurla Complex,
Mumbai – 400 098. ...Respondents

Mr. Aabad Ponda, Senior Advocate i/b Mr. Pradeep Dubey for the
Petitioner.

Mr. V.B.Konde Deshmukh, Addl.PP for the Respondent-State.

Mr. Kuldeep Patil a/w Mr. Nagesh Khedkar for the Respondent No.2-
CBI.

CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.
DATE : 18th MARCH, 2024

ORAL ORDER (PER REVATI MOHITE DERE, J) :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. By this petition, the petitioner seeks a direction to the respondent No.2 – CBI, to return the petitioner’s passport and to quash the impugned Look Out Circular (‘LOC’) issued against the petitioner, at the behest of the respondent No.2 – CBI.
4. Learned Counsel for the petitioner submits that as far as prayer clause (a) is concerned, which seeks return of the petitioner’s passport, the same does not survive, in view of the order dated 27th February, 2024 passed by this Court in the aforesaid petition. He submits that pursuant to the said order, the respondent No.2 - CBI has returned the petitioner’s passport.

5. As far as quashing of the LOC is concerned, Mr. Ponda, learned Senior Counsel for the petitioner submits that the petitioner has co-operated with the investigation and has attended the office of the respondent No.2 – CBI. He submits that the petitioner cannot be detained indefinitely, thereby impinging upon his right to livelihood. He submits that the petitioner was called as a witness and not as an accused in the case registered by the respondent No.2 – CBI. He submits that the petitioner has been working in Dubai and as such, is required to join his work, considering that he needs to earn his livelihood.

6. Mr. Patil appearing for the respondent No.2 – CBI opposed the petition. He submits that the investigation is still in progress and will take about six months to complete. Learned APP does not dispute the fact, that as of today, the petitioner is not an accused in the CBI case and that the petitioner was summoned to the respondent No.2's office, as a witness. According to Mr. Patil, the

petitioner has not co-operated with the investigation.

7. Perused the petition. It appears that the petitioner, an Indian National, is residing in Dubai, for his livelihood, since 2011 till 2021. According to the petitioner, on 14th July, 2021, officers of the respondent No.2–CBI came to the petitioner’s house in Nagai, District – Nagore Nagapattinam, Tamil Nadu and seized the petitioner’s passport and issued a notice to the petitioner under Section 160 of the Code of Criminal Procedure to appear for investigation. It appears that pursuant to the said notice, the petitioner attended the office of the respondent No.2 – CBI on 15th August, 2021. The petitioner, was thereafter, again called on 28th April, 2022. The petitioner was again interrogated on that day till 5.00 p.m. and was told that he would be required to attend the office of the CBI as and when called. On 28th April, 2022, when the petitioner attended the office of the respondent No.2 – CBI, the petitioner was informed that his passport was submitted to the Mumbai Court and that an LOC was issued against him. It is the petitioners case that again on 21st June, 2023 and 22nd

June, 2023, the petitioner attended the office of the respondent No.2 CBI at Hyderabad.

8. It appears that the petitioner was called as a witness in the case registered by the CBI as against some other accused. When we questioned Mr. Patil, whether the petitioner is an accused in the said case, he submits that as of today, investigation is in progress and that the investigation is likely to take six more months. He submits that as of today, the petitioner is not an accused, however, the investigation is still in progress.

9. Pursuant to our order dated 27th February, 2024, the petitioner's passport was returned to the petitioner. It is not in dispute that the petitioner was working in Dubai for the last 10 years. Mr. Ponda, learned Senior Counsel for the petitioner has tendered an affidavit-cum-undertaking of the petitioner dated 17th February, 2024. The same is taken on record. In the said affidavit-cum-undertaking, the petitioner has stated that he was required to travel to India

because of Covid-19 restrictions and during his stay in India in 2021, he met with an accident and was advised bed rest, when the respondent No.2 visited his house and seized his passport. He has further stated that on inquiry with the officers of the respondent No.2, he was told that his passport was seized for investigation purposes in connection with a case, being case No. RC/BSM/2014/E/0015. He has further stated that he has co-operated with the investigation and attended the office of the respondent No.2 as and when called. In para 4 and 5, the petitioner has stated as under:

“4. I say that I have, by my letter dated 07.09.2022, being Exhibit-D Colly. to the Petition, already informed the officers of the Respondent No.2 that I am ready and willing to make myself available for any further investigation.

5. I hereby undertake to this Hon’ble Court that I will attend the Court summons and/or appear before the concerned Court, as and when summoned as a witness and also co-operate in with the Respondents as and when it is required.”

10. The petitioner is in India since 2021. The petitioner was summoned as a witness. The petitioner’s right to livelihood

guaranteed to him under the Constitution cannot be curtailed, more particularly, when he is not an accused. Just because, investigation is pending, cannot be a ground to deprive him of his livelihood. Mr. Ponda, learned Senior Counsel, on the instructions of the petitioner submitted that the petitioner will attend the office of the respondent No.2 – CBI once in two months (total six months) i.e. thrice in six months, however, the CBI be directed to give atleast seven days prior notice, so as to enable the petitioner to attend the office of the CBI. The said submission is a fair submission and as such, we accept the same.

11. Considering what is stated hereinabove, we allow the petition and as such, quash and set aside the LOC issue against the petitioner.

12. The petitioner to abide by the affidavit-cum-undertaking tendered by him and the statement made by Mr. Ponda, on instructions of the petitioner vis-a-vis coming to India, once in two

months, on notice of minimum seven clear days be given to the petitioner.

13. Rule is made absolute on the aforesaid terms. The petition is accordingly allowed and is disposed of.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.