

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.172 OF 2024

Hyacinth Uzoigwe	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Ms. Mallika Sharma a/w. Mr. Dilip Mishra and Ms. Zehra Charania i/b. Mr. Ayaz Khan for Applicant.

Mr. Mayur S. Sonavane, APP for Respondent-State.

Mr. R. V. Londhe, API, ANC Ghatkopar, Crime Branch, Mumbai.

CORAM : MANISH PITALE, J.

DATE : JULY 09, 2024

P.C. :

1. Heard Ms. Sharma, learned counsel for the applicant and Mr. Sonavane, learned APP for the respondent-State.

2. By this application, the applicant seeks relaxation of condition No.6 imposed in an order dated 01.02.2024 passed by the Special Judge, City Civil & Sessions Court, Greater Bombay, while granting bail to the applicant, for offences under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. The learned counsel for the applicant submits that the aforesaid condition No.6 is an onerous condition, which needs to be relaxed / modified. In support thereof, she submits that the applicant's passport was already seized by the Anti-Narcotics Cell (ANC), Kandivali Unit in C.R. No.70 of 2015. It is further submitted that the condition regarding certificate of assurance from the country to which the applicant belongs cannot be insisted upon, in the light of the order dated 23.02.2024 passed by the Supreme Court in **Special Leave Petition (Criminal) Nos.6339-6340 of 2023** (*Frank Vitus Vs. Narcotics Control Bureau*), as also other

similar orders passed by the Supreme Court.

4. On the other hand, the learned APP submits that the applicant is a habitual offender, who is a citizen of Nigeria. In the present case, the applicant is facing investigation for offences under the provisions of the NDPS Act for the third time, as on earlier occasions also, cases have been registered against the applicant by ANC, Kandivali Unit and ANC, Azad Maidan Unit. It is submitted that the *panchanama* placed on record, which shows seizure of passport of the applicant, clearly records that the passport was valid only upto 03.06.2018. Therefore, no fault can be found with the condition imposed by the aforesaid Court for producing a valid passport. As regards certificate of assurance, it is submitted that the orders passed by the Supreme Court cannot be disputed.

5. This Court has considered the material on record. The *panchanama* dated 02.02.2015 placed on record with the present application indeed shows that the passport of the applicant was seized on 02.02.2015. It is relevant to note that the said passport was seized in connection with C.R.No.70 of 2015 registered by ANC, Kandivali Unit for offences registered against the applicant under the NDPS Act. Subsequently, C.R.No.9 of 2020 was registered against the applicant by ANC, Azad Maidan Unit, for offences under the NDPS Act and thereafter, the present case i.e. C.R.No.63 of 2023 has been registered by ANC, Ghatkopar Unit against the applicant for the offences under the NDPS Act. Thus, there is substance in the contention of the learned APP that the applicant is a habitual offender and he has repeatedly committed offences under the NDPS Act.

6. The contents of the *panchanama* dated 02.02.2015 also show that the passport of the applicant seized under the said *panchanama* was valid only till 03.06.2018. There is nothing to indicate that the applicant

took any steps for renewing the passport and as on today, the passport seized under the *panchanama* dated 02.02.2015 is a passport, validity of which has already expired.

7. The condition of which a relaxation is sought reads as follows:-

“6. Prior to his release, the applicant / accused shall furnish his residential proof and deposit Passport and valid visa, if any, with Investigating Officer under intimation to this Court, depositing of visa is a condition precedent for his release from the custody. He shall also produce the certificate of assurance from the country to which he belongs.”

8. This Court is of the opinion that insistence on valid visa can perhaps be said to be an onerous condition, because there can be no guarantee of the Union of India issuing a valid visa to the applicant, who is repeatedly found charged with offences under the NDPS Act. Similarly, the condition of producing certificate of assurance from the country to which the applicant belongs is in the teeth of the opinion of the Supreme Court as manifested in the order passed in the case of **Frank Vitus Vs. Narcotics Control Bureau** (*supra*). But, the condition for depositing passport, meaning a valid passport, as a pre-condition for reliefs, cannot be said to be an onerous condition. The said condition being relaxed would mean that the applicant would be released, without any document, much less a valid passport, to assure the investigating authority and the concerned court about the identity and whereabouts of the applicant.

9. The applicant obviously cannot be permitted to move around freely in this country without a valid document to show the country to which he belongs and such a document being deposited with the investigating officer as a pre-condition for release on bail. This would further ensure that the applicant does co-operate with the trial court in proceedings in future.

10. In view of the above, the application is partly allowed. The stipulation in the above-quoted condition No.6, insisting upon valid visa and producing a certificate of assurance from the country to which the applicant belongs, is deleted. The stipulation of depositing the passport, thereby meaning a valid passport before the investigating officer, is retained.

11. The applicant is at liberty to apply for issuance of a valid passport to the Embassy of the country to which he belongs. Such applications are nowadays permitted online also. The jail authorities shall ensure that appropriate facilities are provided to the applicant, if required through a Nodal Officer, to apply online for such a passport.

12. Upon such valid passport being obtained by the applicant, he will be able to satisfy the stipulation which is retained in condition No.6, as noted hereinabove.

13. The application is disposed of.

(MANISH PITALE, J.)

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