

CRR 1359 of 2024

Vijay Prasad Malla
Vs.
Serious Fraud Investigation Office

Adv. Sandip Chakraborty,
Adv. Shobha Upadhyay,
Adv. Rajnandini Das,
... for the petitioner.
Adv. Arun Kumar Maiti (Mohanty)
Adv. Mayukh Mukherjee,
Adv. Soumavo Ghosh,
...for the SFIO.

Supplementary affidavit filed by the petitioner is taken on record.

Heard learned counsels for the parties.

By an order passed on 28th March, 2022 in complaint case no. 23 of 2021, the learned Judge, 2nd Special Court, Calcutta granted interim bail to the petitioner on certain conditions:-

- (i) The petitioner would submit his passport before the learned Court;
- (ii) The petitioner would report to the Court once a week until further orders; and
- (iii) He was directed not to leave the State of West Bengal without prior permission of the Court and such permission would be granted on exemplary and urgent grounds.

The petitioner filed an application for relaxation/modification of the conditions and by an order passed on 2nd May, 2022, the learned trial Court modified one of the conditions of bail by permitting the petitioner to leave the jurisdiction of West Bengal and go to his native place of Visakhapatnam. The petitioner was

directed to report to the Court once in a month until further orders and remain present before the Court as and when directed. A further application was made by the petitioner for confirmation of the interim bail, relaxation and modification of the conditions imposed therein. By an order passed on 1st September, 2023, the interim bail was confirmed and the conditions of bail waived. The petitioner was directed to attend the Court on every date fixed. The petitioner filed an application before the learned trial Court for return of his passport for the purpose of renewal of the same. By the order impugned dated 4th January, 2024, the learned trial Court turned down the prayer of the petitioner in view of the gravity of the offence alleged.

Learned counsel for the petitioner submits that since the bail conditions were waived by the learned trial Court on prayer of the petitioner, the passport ought to have been returned to him in view of the same. Learned counsel has placed reliance on the authority in *Suresh Nanda vs. Central Bureau of Investigation* reported in (2008) 3 SCC 674 wherein the Hon'ble Supreme Court has observed that the power to impound a passport lies with the passport authority under Section 10(3) of the Passports Act, 1967. Learned counsel submits that prolonged custody of the passport amounts to its impounding by the Court which is not authorised in law. Learned counsel has also placed reliance of an order of a coordinate Bench of this Court dated 11th July, 2019 in CRAN 1140 of 2019 in CRM 12756 of 2017 wherein the Court has recorded that since the Court could not impound a passport, the passport ought to be returned to the petitioner with a caveat that

the petitioner would intimate the learned Chief Judicial Magistrate whenever he wished to leave the country and would intimate the purpose of such visit. Learned counsel submits that the passport has expired in the meantime and the petitioner intends to apply before the authority for renewal of the same.

Per contra, learned counsel for the opposite party submits that the petitioner may flee from justice if the passport is returned to him. Also, the bail condition was waived by the learned trial Court only to the extent of his regular attendance before the Court.

I have considered the rival submission of the parties and material on record.

The order dated 1st September, 2023 demonstrates that the prayer of the petitioner for relaxation/modification/conformation of the interim bail was allowed upon confirming the interim bail and waiving the conditions of bail. The petitioner was directed to attend Court on every date fixed. The interim bail was granted in favour of the petitioner on 28th March, 2022 and the passport is in custody of the Court since then. The petitioner seeks to renew the same. Waiver of conditions of bail includes waiver of the first condition directing the petitioner to submit his passport before the learned Court. In view of waiver of such conditions, the passport submitted by the petitioner ought to have been returned to the petitioner by the learned trial Court. All the bail conditions having been waived, there is no reason for the learned trial Court to turn down the prayer of the petitioner for return of his

passport, moreso, since it was required for the purpose of renewal of the same.

In view of the above, this Court is inclined to hold that the passport submitted by the petitioner before the learned trial Court ought to be returned to him forthwith. The order impugned dated 4th January, 2024 passed by the learned Judge, 2nd Special Court, Calcutta in Complaint Case no. 23 of 2021 is set aside/quashed.

The passport submitted by the petitioner be returned to him forthwith.

However, the petitioner shall intimate the learned trial Court whenever he wishes to leave the country and shall also intimate the learned trial Court of the purpose of his visit.

CRR 1359 of 2024 is disposed of.

Urgent certified website copy of this order, if applied for, be given to the parties, upon compliance of all requisite formalities.

(Suvra Ghosh, J.)