

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 434 OF 2024

Mohammad Hanif Nurani

.. Applicant

Versus

The State of Maharashtra & Anrs.

.. Respondents

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- Dr. Sujay Kantawala a/w Mr. Anupam Dighe, Ms. Chandni Tanna and Ms. Renita Alex, Advocates i/b India Law Alliance for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent No.1 – State.
- Ms. Ruju Thakker i/b Ms. Carina Xavier, Advocates for Respondent No. 2 – DRI.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2025

P.C.:

1. Heard Dr. Kantawala, learned Advocate for Applicant; Ms. Ganapathy, learned APP for Respondent No.1 – State and Ms. Thakker, learned Advocate for Respondent No.2 – DRI.

2. Present Application seeks deletion of bail condition No.3 in the order dated 21.05.2021 passed by the Metropolitan Magistrate, 8th Court at Esplanade, Mumbai. The condition requires Applicant to surrender his passport every time he returns from abroad and obtain permission to travel abroad on the next occasion.

3. It is prosecution case that Applicant was arrested on 21.03.2021 in Remand Application No.279 of 2021 for the offence punishable under Section 135(1)(i) of the Customs Act, 1962 at the

instance of the Directorate of Revenue Intelligence, Mumbai (for short “**DRI**”). Since the chargesheet was not filed within the stipulated period of 60 days as stated under Section 167(2) of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”), as the said offence is punishable upto 5 years of imprisonment. Hence Applicant preferred Application for default bail which was granted by order dated 21.05.2021. On 24.05.2021, Applicant submitted / surrendered his passport before Respondent No.2 – DRI. Subsequently, Applicant filed a Miscellaneous Application No. 2081 of 2021 for relaxation of the said bail condition however it came to be rejected by order dated 18.11.2021. Thereafter Applicant filed three (3) Applications on the previous occasions seeking permission to travel abroad and return of passport which was allowed by orders dated 23.12.2021, 11.02.2022 and 16.07.2022 by the Trial Court. Pursuant to which Applicant filed Miscellaneous Application No. 4193 of 2022 which came to be rejected by the impugned order dated 13.12.2022. Hence the present Application before this Court.

4. Dr. Kantawala, learned Advocate appearing for the Applicant would submit that Applicant is a businessman who frequently travels abroad for business purposes. He would submit that condition No.3 not only offends his right to practice his profession as guaranteed under Article 19(1)(g) of the Constitution of India but also his right to travel abroad which is an integral part of his right to life guaranteed under

Article 21 of the Constitution of India.

4.1. He has referred to and relied upon the decision of the Supreme Court in the case of *Suresh Nanda Vs. Central Bureau of Investigation*¹ and another decision of this Court in the case of *Jignesh Prakash Shah Vs. Central Bureau of Investigation*², in support of his submissions for deleting such an onerous condition.

4.2. He would submit that investigation stands completed as Show Cause Notice was issued on 16.09.2021 and subsequently an order dated 24.11.2023 has been passed which is further stayed by this Court vide its order dated 03.05.2024. He would submit that Show Cause Notice dated 03.05.2024 was issued by office of Commissioner of Customs which further substantiates completion of investigation. He would submit that the said onerous condition is causing grave prejudice and harm to Applicant's business as he is unable to attend business events as invites are received only a few days prior to the event which makes it extremely difficult for him to seek permission from the Court to travel abroad and seek the passport from the Trial Court and DRI. He would submit that he has regularly cooperated with the investigation. He would submit that Applicant has deep roots in the Society and his two daughters and family members are all permanently residing in Mumbai. Hence he would urge the Court to

¹ (2008) 3SCC 674

² 2018 SCC OnLine Bom 1166

modify the order dated 21.05.2021 to the extent of deleting condition No.3 and be pleased to quash and set aside the impugned order dated 13.12.2022 passed by the Trial Court and direct DRI to return the passport to the Applicant in accordance with law.

5. Ms. Thakker, learned Advocate appearing for Respondent No.2 – DRI would submit that the investigation has been completed and the matter has proceeded for adjudication and presence of Applicant would be required for the purpose of trial. She would submit that Applicant filed Application for relaxation / deletion of condition No.3 which came to be rejected on 18.11.2021 which was never challenged and thus the said order has attained finality.

5.1. She would submit that pursuant to that Applicant filed three Applications on previous occasions for seeking permission to travel abroad for business purposes which were to be allowed. She would submit that as long as Applicant is permitted to travel abroad, his fundamental right under Article 21 of the Constitution of India is not jeopardized. She would submit that Show Cause Notice issued to the Applicant is for confiscation of the alleged smuggled goods and adjudication in the said matter is still pending. She would submit that if Applicant is allowed to retain his passport permanently, securing his presence will become impossible and possibility of Applicant to evade the country also cannot be denied. She would submit that as Applicant

is travelling to Zambia, a country with which there is no bi-lateral extradition treaty, it would make him a flight risk. Hence she would urge the Court to reject the Application.

6. Ms. Ganapathy, learned APP for Respondent No. 1 - State has adopted and supported the submissions advanced by Ms. Thakker.

7. I have perused the record placed before me. At the outset it is seen that passport is not an incriminating document in the prosecution case and hence seizure of passport permanently *prima facie* would stand contrary to the provisions of the Passports Act, 1967 and more specifically Sections 10(3)(e) and 10-A thereof. The condition of permanent seizure of passport by the Court would indirectly amount to impounding of the passport. The Passports Act is a special Act and it would override the provisions of Cr.P.C. for the purpose of impounding / retention of passport.

8. The present case before me is such that considering the business profile and antecedents of the Applicant he would be required to travel abroad at short notice and therefore if he has to seek release of his passport on every occasion, the time spent in doing so is clearly detrimental to his prospects given the existential conditions in Court. This is not a case where the Applicant has misused the liberty given to him. Submission on behalf of the DRI that he is a flight risk therefore cannot be countenanced as perviously Court has released his passport

thrice and Applicant has travelled aboard and diligently complied with the condition of return. Employing such an onerous condition in a bail order clearly amounts to indirectly impounding of the passport in substance. Even under the provisions of the Passport Act and more specifically Sections 10-A readwith 10 (3)(e), passport can be retained by the Central Government for four weeks and thereafter it can only be retained by the order of the Passport Authority under Section 10(3) of the Passports Act. The Act of repeatedly depositing the passport after undertaking every travel itinerary indirectly amounts to retention of the passport by the Court. As delineated above, the Passports Act is a special law while Cr.P.C. is a general law and it is well settled that the special law prevails over the general law. This principle is expressed in the maxim *generalia specialibus non derogant*.

9. In view of the my above observations and decisions of the Supreme Court in the case of ***Suresh Nanda*** (*1st Supra*) followed by decisions in the case of ***M.T. Enrica Laxie Vs. Doramma***³; ***S. Sathyanarayana Vs. State of Karnataka***⁴; ***Sir Mohammed Tasnim Vs. State of Karnataka***⁵; ***Devashish Garg Vs. Directorate of Revenue Intelligence***⁶; ***Veenita Gupta Vs. State***⁷; ***State of Maharashtra Vs. Tapas D. Neogy***⁸; ***Avinash Bhosale Vs. Union of India***⁹ and ***Jignesh Prakash***

3 2012 SC 2134

4 ILR 2003 Kar 883

5 ILR 2015 Kar 5225

6 LPA 628/2017 and CM Appl.34731-34733/2017, decided on 22.09.2017

7 Cri. R.C. No. 1062 of 2010, decided on 02.11.2010

8 (1999) 7 SCC 685

9 WP (Cri.) No.2432 of 2007, decided on 08.10.2008

Shah (2nd *Supra*), the subject condition in question deserves to be interfered with.

10. Nevertheless to state that if the Prosecuting Agency / Authority desires to retain the passport in the Court's custody or with itself due to any reason it shall be open to the Prosecuting Agency / Authority to seek such relief under the Passports Act in accordance with law. It is clarified that this Court has not expressed any opinion on the merits of the pending case of the Applicant and any observation made herein shall not influence the pending case.

11. I am of the opinion that it will be unjust to deny the Applicant the opportunity to travel abroad for his future business prospects, if such an opportunity would stand defeated due to the delay in the present system for seeking permission of the Court for release of the passport on every such occasion which is practically not possible due to the existential delay that occurs. It is seen that Applicant has deep roots in the Society and no criminal antecedents whatsoever.

12. Condition No.3 in the bail order dated 21.05.2021 therefore stands deleted. Rest of the order is retained. Resultantly the impugned order dated 13.12.2022 is quashed and set aside.

13. It is however directed that whenever the Applicant travels abroad in future, he shall furnish all details of his travel itinerary

alongwith all documentary material relating to his purpose of travel, dates and details of travel and return, tickets, visa etc. with the Respondent No.2 – DRI at least one week in advance before he undertakes the travel and intimate about his return back within one week of his return so as to enable the DRI to apply its mind to the same.

14. In view of the above, passport of the Applicant shall be returned to him within one week from today by the Court / DRI, whosoever is having custody of the same.

15. Criminal Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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