

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 105 OF 2025

Manish Gulabchand Birawat

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Dr. Sujay Kantawala a/w. Mr. Anupam Dighe, Ms. Chandni Tanna, Ms. Renita Alex, Advocates i/by India Law Alliance for Applicant.
 - Mr. Dinesh J. Haldankar, APP for Respondent No.1 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 06, 2025.

P.C.:

1. Heard Dr. Kantawala, learned Advocate for Applicant and Mr. Haldankar, learned APP for Respondent No.1 – State of Maharashtra. None appears for Respondent No.2 – DRI.

2. Present Application is filed seeking deletion of bail condition No.3 imposed vide order dated 21.05.2021 which is appended at Exhibit “A” – page No.27 of the Application. The said condition No.3 is reflecting on page No.28 of the Application and it reads thus:-

“3. Applicants are directed not to leave India without prior permission of the Court and DRI Department is allowed to retain their passport until further orders and applicants to submit their passport with department within three days after their release.”

3. Dr. Kantawala, learned Advocate for Applicant has placed before me the order dated 05.02.2025 passed in Criminal Bail

Application No.434 of 2024 filed by one of the co-accused in the same crime. An identical order with the same condition No.3 on the same date was passed in the case of the said co-accused also. Applicant therein namely co-accused in the same crime as also the DRI namely the Investigating Authority were heard fully by the Court. A detailed reasoned order dated 05.02.2025 appended at Exhibit “J” – page No.42 of the Application was passed by the Court after hearing the parties on merits.

4. Applicant before me has filed the present Application. *Prima facie* reading the ground on which the present Application is filed, he is in an identical position as that of the Applicant in Criminal Bail Application No.434 of 2024. The grounds in the present Application are appended in paragraph Nos.19A to 19N and I have perused the same. *Prima facie* the condition No.3 of which deletion is sought is undoubtedly onerous.

5. Respondent No.2 has been served. Affidavit of service dated 24.02.2025 has been filed and the same is taken on record. Copy of the acknowledgement by Respondent No.2 is appended to the Affidavit. Hearing of the present Application today has also been informed to the office of the DRI by the Advocate for Applicant on 01.03.2025.

6. On perusing the record, there is no reason as to why the present Application needs to be adjourned to hear the DRI since the DRI has already filed its Affidavit in Criminal Bail Application No.434 of 2024 and their objections have been duly considered by the Court. There can be no other different objections.

7. *Prima facie.* it is seen that passport is not an incriminating document in the prosecution case and hence its seizure permanently *prima facie* would be violative of the provisions of Sections 10(3)(e) and 10-A of the Passports Act, 1967 and it would indirectly amount to impounding of the passport. In paragraph Nos.7 to 10 in the order dated 05.02.2025, I have delineated the reasons and the grounds on which the said condition No.3 requires to be deleted as it is onerous by the Court. The said reasons stated in the aforesaid order applies squarely to the case of the Applicant also. For convenience, the aforesaid paragraph Nos.7 to 10 are delineated hereunder:-

“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 *generalalia 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 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."

8. I am of the opinion that it will be unjust to deny the Applicant the relief prayed for in the present Application, considering his deep roots in the society and he has no criminal antecedents either requiring the Applicant to constantly approach the DRI and the concerned appropriate Court for seeking permission and copy of the passport whenever he has to travel abroad is *prima facie* on the face of record onerous due to the aforesaid reasons.

9. It is therefore directed that condition No.3 in bail order dated 21.05.2021 appended at Exhibit “A” – page No.27 of the present Application stands deleted. Rest of the order dated 21.05.2021 is retained. Resultantly, the impugned order dated 04.10.2024 is quashed and set aside.

10. 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.

11. 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 possession of the same.

12. Criminal Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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signed by AJAY
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