

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

Cri.Writ Petition No.2557 of 2025

Gaurav Goenka

Aged: 44 years,

A citizen of India, residing at

101A, Somerset House,

Sophiya College Lane,

Mumbai-400 026.

..... Petitioner.

Vs.

The State of Maharashtra

Through Economic Offences

Wing, Mumbai.

..... Respondent.

Dr Sujay Kantawala i/by SK Saxena for the petitioner.

Ms MR Tidke, APP, for respondent/State.

PI Sharad Gave, EOW, Mumbai.

Coram : R.N.Laddha, J.

Date : 6 May 2025.

P.C. :

The learned Counsel appearing on behalf of the petitioner submits that the petitioner is restricting his present request solely to the relief sought under prayer clause (b) of the petition, which reads thus :

“(b) This Hon’ble Court may issue directions to the respondent EOW to allow the petitioner to appear before the investigating officer through video conferencing for recording his statement.”

2. The learned Counsel for the petitioner submits that the petitioner is a NRI, presently residing in the UAE since the year 2017, where he is engaged in business activities. The petitioner holds a valid Indian Passport bearing No.Z-3423966 and, in the course of his professional obligations, has frequently travelled to and from India. The petitioner, in due course, submitted an application for the renewal of his Indian Passport at the BLS office in Dubai. In compliance with the prescribed procedure, his original passport was collected by the concerned authorities. Subsequently, on 28 November 2024, the petitioner received an email from the Passport Section of the Consulate General of India (CGI), Dubai, stating that a remark had been recorded in his file by the Regional Passport Office, Mumbai. The said remark indicated that the matter was subject to further verification by the competent authority. Since the receipt of this communication, the petitioner has made multiple written representations via email to the Passport Section of CGI, Dubai, seeking clarification regarding the status and reason for the delay in processing his renewal request. However, despite several attempts, he has not received any response or explanation from the authorities. The learned Counsel

further submits that upon making further inquiries, the petitioner came to understand that the requirement for clearance from the EOW, Mumbai, had been cited as the reason for withholding the passport renewal. This clearance was allegedly necessitated due to an ongoing investigation arising out of FIR No.14 of 2018. In view of the above, and with a *bonafide* intention to cooperate with the investigation, the petitioner addressed a letter dated 13 February 2025 to the EOW, Mumbai, wherein he voluntarily expressed his willingness to participate in the investigation and offered to have his statement recorded through audio-video electronic means. However, the said communication elicited no response from the EOW. Consequently, the petitioner issued a follow-up communication dated 27 February 2025, reiterating his willingness to cooperate, which too has remained unanswered.

3. The learned Counsel further submits that the petitioner thereafter moved an application before the Special MPID Court, *inter alia*, seeking permission for the renewal of his passport and for leave to join the ongoing investigation through audio-video electronic means.

However, the said application came to be dismissed. The impugned order, rejecting the petitioner's prayer to participate in the investigation via audio-video electronic means, is premised solely on the ground that a Non-Bailable Warrant ('NBW') is presently pending against him. The learned Counsel for the petitioner submits that the impugned order dated 9 April 2025 passed by the Special MPID Court, in Special MPID Case No.19 of 2018, is *ex-facie* perverse, devoid of merits and vitiated by a complete non-application of judicial mind. The order summarily dismisses the petitioner's genuine and *bonafide* request to participate in the investigation proceedings by way of audio-video electronic means, without assigning any cogent reason for such rejection. He submits that the learned trial Court failed to consider the petitioner's willingness to cooperate with the investigation through legally permissible means. The petitioner has never exhibited any intention to abscond or obstruct the process of law. On the contrary, he has made repeated efforts to engage with the investigating agency and has proactively expressed his readiness to join the investigation from abroad. The learned Counsel further points out that, to date, the petitioner has not received any notice, summons or formal intimation either from the

EWO, Mumbai, or from the Court relating to the investigation or legal proceedings arising out of FIR No.14 of 2018. Despite his demonstrated willingness to comply with investigative requirements, the petitioner has been left without any communication or guidance from the authorities. This inaction, coupled with the issuance of adverse directions, has effectively rendered the petitioner unable to assist in the investigation. Moreover, the learned Counsel contends that the EOW's act of directing the Regional Passport Office to withhold the renewal of the petitioner's passport, without issuing a summons or initiating any process in accordance with law, is patently arbitrary, disproportionate, and contrary to the principles of natural justice. Such action has not only impeded the petitioner's mobility but also obstructed his ability to appear before the EOW and cooperate with the investigation, which he is otherwise willing to do.

4. The learned Counsel further submits that under Section 102 of the CrPC, the police may seize property, including documents such as a passport, during the course of an investigation. However, the authority to impound a passport is exclusively vested in the competent passport

authority under Section 10(3) of the Passports Act, 1967. This statutory provision mandates adherence to due process, including the issuance of notice and providing an opportunity of hearing to the passport holder before any such adverse action is taken. In support of this contention, the learned Counsel relies on the decision in *Suresh Nanda Vs. Central Bureau of Investigation*¹.

5. On the other hand, the learned APP representing the respondent/ State, submits that a NBW was issued against the petitioner/ accused pursuant to an order dated 6 December 2024 passed by the competent Court. She submits that, since the petitioner is currently residing outside the country and has not appeared before the investigating authority, despite the pendency of proceedings under FIR No.14 of 2018, the issuance of the NBW was warranted to secure his presence. The learned APP further contends that the petitioner has been declared as a “wanted accused” in the said investigation, and his physical presence is essential for the progress of the case. In such circumstances, permitting the petitioner to join the investigation or appear before the EOW, Mumbai, through audio-video electronic means would not be appropriate, as

¹ (2008) 3 SCC 674.

it may undermine the seriousness of the charges. Accordingly, the learned APP submits that the petitioner's request to participate in the investigation remotely may not be acceded to at this stage.

6. This Court has given anxious consideration to the rival contentions and perused the record.

7. The record reveals that upon becoming aware in the UAE that his passport was being withheld at the behest of the EOW, the petitioner promptly addressed a letter dated 13 February 2025 to the EOW. In this letter, the petitioner voluntarily offered to cooperate with the ongoing investigation and expressed his readiness to have his statement recorded through audio-video electronic means. Despite this, the EOW did not respond to the petitioner's communication. In the absence of any reply, the petitioner was constrained to file an application (Exh.55) before the learned Special MPID Court, wherein he sought permission to renew his passport and requested leave to participate in the investigation through audio-video electronic means. However, the said application came to be rejected by order dated 9 April 2025. In light of the EOW's directions to withhold the renewal of the petitioner's passport, the

petitioner has been rendered incapable of returning to India, thereby preventing him from appearing in-person before the investigating officer. The petitioner now seeks the indulgence of this Court to permit him to appear before the investigating officer via audio video electronic means and to cooperate fully with the investigation. It is pertinent to note that the statutory framework under the CrPC, particularly the proviso to Section 161, as well as the corresponding provisions under Section 180 of the BNSS, expressly recognises and facilitates the conduct of trial related procedures and examination of witnesses through audio video electronic means. Section 180 of the BNSS reads as follows :

“ Examination of witnesses by police –

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

Provided that statement made under this Sub-Section may also be recorded by audio-video electronic means”

8. In view of the forgoing circumstances, it is hereby

directed that the petitioner shall appear before the investigating officer through audio-video electronic means on 7 May 2025 between 2:00 p.m. and 4:00 p.m., for the purpose of recording his statement in connection with the investigation.

9. Accordingly, the petition stands allowed and disposed of in terms of prayer clause (b).

[R. N. Laddha,J.]