



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4935 OF 2025**

Abhishek Ashok Lohia	...	Petitioner
versus		
The State of Maharashtra	...	Respondent

Mr. Anukul Seth, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.
PSI Mahesh Sawant, Goregaon Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 24 SEPTEMBER 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to a judgment and order dated 18 March 2025 passed by the learned Sessions Judge, Greater Mumbai, in Criminal Revision Application No.13 of 2015, whereby the learned Sessions Judge dismissed the Revision Application preferred by the Petitioner against the directions issued by the learned Magistrate, Borivali that the Petitioner shall not travel abroad without the prior permission of the Court while granting no objection for the renewal of the passport of the Petitioner for five years.
3. The Petitioner is arraigned in PW/6702744 of 2024 for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860, before the Court of learned Magistrate, Borivali, Mumbai. As the passport of the Petitioner is to expire on 20 November 2026, the Petitioner

sought no objection of the jurisdictional Court to renew the passport. By an order dated 19 November 2024, while granting no objection for the renewal of the passport for the period of five years, the learned Magistrate was persuaded to put a condition that the Petitioner shall not travel abroad without the prior permission of the Court.

4. Being aggrieved by the said condition, the Petitioner preferred a Revision before the learned Sessions Judge. By the impugned order, the said revision application came to be dismissed. Learned Sessions Judge was of the view that the right of the applicant to travel abroad is not curtailed. The condition that the applicant shall obtain permission of the Court, ensures balance between the applicant's personal liberty and the interest of justice. Therefore, no interference was warranted in exercise of the revisional jurisdiction.

5. Mr. Anukul Seth, learned Counsel for the Petitioner, would urge that the aforesaid condition is in teeth of the Office Memorandum (OM) dated 10 October 2019 issued in furtherance of the Notification dated 25 August 1993 issued by the Central Government regarding issuance of the passport to the applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clause (f) of sub-section (2) of Section 6 of the Passport Act, 1957. Mr. Seth laid particular emphasis on clause 5 (vi) of the said OM. It reads as under :

5(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the Court has taken cognizance of the same."

6. Mr. Seth would urge, in the case at hand, though post completion of investigation, chargesheet has been filed for the offences punishable under Sections 406, 420 read with 34 of IPC, yet, learned Magistrate has not taken cognizance of the said offences. Therefore, learned Magistrate could not have imposed the condition to obtain the permission of the Court before the applicant travels abroad.

7. It was submitted that the criminal proceedings can be considered to be pending only when the Court has taken cognizance of the offences. Therefore, before taking cognizance of the offences, the Magistrate could not have imposed such condition. Mr. Seth placed reliance on an order dated 21 June 2024 passed by the Division Bench of this Court in the case of **Kartik Vaman Bhatt V/s. Union of India and Ors.**¹, wherein after adverting to the aforesaid OM, this Court held that only when a case is registered before any

1 WP(L) No.14496 of 2024

court of law and the Court has taken cognizance of the same, criminal proceedings can be considered to be pending. Office Memorandum was certainly binding on the passport authority. Therefore, the decision taken by the passport authority not to process the application for issuance of the passport of the Petitioner therein, was unsustainable.

8. The aforesaid decision, I am afraid, advances the cause of the submission on behalf of the Petitioner. The aforesaid decision was rendered in the context of the refusal by the passport authority to issue passport on account of the pendency of the criminal proceedings. Certainly, and, there can be no duality of opinion that, the aforesaid OM binds the passport authority. However, the broad submission that the aforesaid OM also restricts the power of the criminal court, before which the prosecution is pending to impose condition not to travel abroad without the permission of the Court, cannot be readily acceded to.

9. The submission of Mr. Seth that the criminal Court can impose such condition only upon taking cognizance of the offences, would drastically impinge upon the power of the Court to impose condition, even at the stage of investigation. While securing personal liberty of an accused, by enlarging him on bail, the criminal Courts are required to impose conditions to ensure that the presence of the accused is secured during the investigation, inquiry and trial. If the submission of Mr. Seth is accepted, criminal courts would be

denuded of the power to impose such conditions, until the cognizance of the offence is taken. This proposition sought to be advanced by Mr. Seth would seriously hamper the cause of effective investigation and administration of criminal justice system.

10. Undoubtedly, the right to travel abroad is a facet of the fundamental right to life and liberty. However, it is subject to reasonable restrictions which may be imposed by the legislation and by the Courts. Therefore, I find it difficult to accede to the submission of Mr. Seth that the learned Magistrate had not power to impose the condition till the cognizance of the offence was taken.

11. In any event, the condition to seek prior permission of the Court before travelling abroad cannot be said to be very onerous. If on account of the increase in the frequency of travel abroad, the Petitioner finds the condition to be onerous, it would always be open for the Petitioner to seek modification of the said condition. Thus, the Writ Petition does not deserve to be entertained.

12. Hence, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)