

08.

Ct.29

CRR 2969 of 2025

09.02.2026

Bd.

IA No. CRAN 1 of 2025

Partha Chakraborti & Anr.

-Vs-

Securities and Exchange Board of India & Anr.

Mr. Ayan Basu

Mr. Anindya Sundar Chatterjee

Mr. Sumit Routh

... for the petitioners.

Mr. Rajib Ray

... for the SEBI

The short question involved in the instant application is whether retention of passport of the petitioners as a condition of bail order for a considerable long period by the court below amounts to illegitimate way of impounding passport.

In the instant case, the petitioners contention is that by an order dated 29th August, 2017 bail was granted to the petitioners being accused no. 5 & 6 inter alia on condition to deposit passport before the Court below. Accordingly, in terms of aforesaid order dated 29.08.2017, the petitioners herein deposited their passport in court by way of Firisti on 13.09.2017.

The grievance ventilated herein is that they have made application on several occasions for return of the passport and lastly they have made such prayer on 22.08.2025, disclosing their necessity to go abroad, which the court below by the impugned order rejected on the ground that no specific case has been set-forth in the application for returning the passport and he refused to return the passport as he is not inclined to entertain such random applications on hypothetical grounds.

Being aggrieved by the said order, learned counsel for the petitioners submits that under section 10 of the Passport Act, 1967, no authority other than the passport authority can impound the passport of a citizen. He further submits that retaining the passport for about last eight years amounts to impounding the passport, which the court below has no authority to do. In this context he relied upon a judgment of **Suresh Nanda -vs- Central Bureau of Investigation** reported in **(2008) 2 SCC (Cri)121**. Accordingly, he prayed for setting aside the order impugned and for a direction upon the court below to return the respective passport of the petitioners.

Learned counsel for the SEBI opposed the prayer for return of the passport of the petitioners and relied upon a Judgment of Kerala High Court passed in **A.V. Mohammed Rafeek -vs- The Union of India & Ors.** and contended that judgment passed in the case of **Suresh Nanda -vs- Central Bureau of Investigation** (supra) was considered in the said case and he also pointed out that in the said judgment of **Suresh Nanda -vs- Central Bureau of Investigation** (supra) the court clearly observed in paragraph 20 that court are not expressing any opinion on the merits of the case and are not deciding whether the passport can be impounded as condition for grant of bail.

I have considered the submissions made by both the parties.

In the instant case from the order of granting bail dated 29.08.2017 it is clear that the petitioners were asked to deposit the passport before the court below as a condition for granting bail and since 13.09.2017 it is lying in the custody of the court

below. The Apex Court in **Suresh Nanda –vs- Central Bureau of Investigation** (supra) has clearly laid down the ratio in paragraph 17 and 18, which is reproduced below:-

“17. In the present case, neither the Passport Authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October 2006. In our opinion, this was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3).”

“18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a “passport” is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edn., p. 133). This principle is expressed in the maxim generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing.”

In the instant case the issue before me is not whether the passport can be directed to be impounded as a condition for granting bail. But since the trial court has no authority to impound passport, whether he has any authority to retain such passport for an indefinite period where no process for impounding the passport has been initiated by the Competent Authority. No case has been made out by SEBI nor any prayer has been made by them for direction upon passport authority to impound petitioners' passport either in the context of bail order or otherwise. The trial court has retained the passport since September, 2017 till date, which action definitely amounts to an action akin to impounding the passport in substance, in view of law settled by Apex Court in **Suresh Nanda –vs- Central Bureau of Investigation** case (supra), which the court below has no authority to do.

In such circumstances CRR 2969 2025 along with connected application are allowed. The impugned order dated 20th May, 2025 is hereby set aside.

The Trial Court is directed to handover the respective passport to the petitioners herein within a fortnight. However, this order will not prevent SEBI to approach before the passport authority under section 10 or under section 10(A) of the Passport Act, for impounding the passport of the petitioners in accordance with law.

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

(Dr. Ajoy Kumar Mukherjee, J.)