

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No.1729 of 2023

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to issue a direction to expeditiously release the passport of the petitioner pending in Crl.M.P.No.66 of 2022 in C.C.No.01 of 2017 on the file of Court of Assistant Sessions Judge, Addanki on the file Court of Assistant Sessions Judge, Addanki.

02. The facts leading to filing of this petition are that the petitioner was working with TruJet Airlines from December 2014 to July 2020 and had to get his passport reissued as it was allegedly stolen from his house and case in Crime No.568 of 2021 was registered by the Rajiv Gandhi International Airport, Police Station, Shamshabad under Sections 448, 380, 406, 120B R/w.34 IPC. For the purpose of getting re-issuance of passport, since he needed No Objection Certificate, he filed petition in Crl.M.P.No.66 of 2022 in C.C.No.01 of 2017 for issuing No Objection Certificate to get the passport in C.C.No.01 of 2017, basing on the judgment in W.P.No. 30286 of 2021 dated 06.05.2022 directing him to approach Criminal Court concerned. The petitioner is the accused along with his father in C.C.No.01 of 2017 which was originally for offence Under Section 326 R/w.34 IPC, but altered to Sec.506 R/w.34 IPC.

In the counter filed by the Additional Public Prosecutor, a request was made to secure the presence of the petitioner to appear before the Court to face the trial and the passport is not misused by the petitioner. C.C.No.01 of 2017 is pending for disposal along with connected case in S.C.No.186 of 2015 with an apprehension that the petitioner may take international travel and in such an event the trial of the case may be hampered, keeping in view that the criminal case be expeditiously disposed of, a direction was given to the Regional Passport Officer, Vijayawada to issue passport to the petitioner as per the provisions of law and produce the same directly before the Court. Accordingly, the passport was re-issued and submitted before the Court. Then the petitioner filed petition under Section 451 Cr.P.C. for return of the said passport. This petition was returned on 08.02.2023, as to how the petition is maintainable in view of the condition imposed in earlier order in Crl.M.P.No.66 of 2022 dated 22.08.2022. As such, the petitioner approach this Court, challenging the Order dated 22.08.2022 in Crl.M.P.No.66 of 2022.

03. Heard Sri Umesh Chandra P.V.G., learned counsel appearing for the petitioner and learned Public Prosecutor for Respondent.

04. The learned counsel for petitioner submitted that the direction given by the impugned Order to deposit the passport before the Court is violative of freedom of movement of the petitioner under Article 19 of the Constitution, besides right to life and liberty enshrined under Article 21 of the Constitution of India. Placing reliance on the decision of this High Court in **D.Suryaprakash Venkata Rao vs State of A.P.** dated 06.12.2019 in Crl.P.No.7063 of 2019 wherein there is reliance on the decision of the Supreme Court in **Suresh Nanda Vs C.B.I, (2008) 3 SCC 674**, the learned counsel submitted that Court cannot impound any passport.

05. During the course of arguments, he further submitted that the petitioner is a pilot by occupation and he needs passport and he had a valid passport even when the petitioner was granted bail in C.C.No.01 of 2017, however, no such condition was imposed and therefore there is no need to keep the passport in custody of the Court, merely because it was reissued pending the trial in that case. The learned counsel further submitted that the petitioner lost his employment due to pendency of criminal case and he is depending on his parents for his livelihood and recently he got an opportunity for employment and for that purpose, he needs his passport or else his livelihood would be at stake.

06. The learned Public Prosecutor representing the respondent submitted that the trial Court has rightly ordered to keep the passport in custody of the Court for the purpose of expeditious disposal of the case, since in the event of the petitioner leaving India, he would not be available to face the trial.

07. It is pertinent to mention that till the petitioner sought to issue NOC to reissue passport, no condition was imposed against him not to leave India without permission of the Court or that he should deposit his passport with the Court. It is only when the petitioner sought to re-issuance of passport which he had, under the unfounded apprehension, a direction was given to the Passport Authority to submit the passport to the custody of the Court, basing on the arguments advanced that the petitioner may leave and thereby the trial may be delayed.

08. In **Suresh Nanda** case (supra) it was held

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 property (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 Cr.P.C. 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 Passport Act. The Passports Act is a special law while Cr.P.C. 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 *generalalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the court under Section 104 Cr.P.C though it can impound any other document or thing”.

09. In **D.Suryaprakash Venkata Rao** case supra it was held

“Time and again this Court is coming across many cases, wherein the deposit of passport is being ordered by the Courts at the time of granting bail etc. The Hon'ble Supreme Court of India in Suresh Nanda's case has very clearly laid down that impounding of passport is not power that is available to the police. The police have a right to merely seize the passport under Section 102 Cr.P.C., but they do not have the power to retain the passport. The Hon'ble Supreme Court of India has already clearly held that the retention of a passport for a long time also amounts to impounding of the passport. This is very clearly laid down in the judgment of Suresh Nanda's case. Apart from that the Hon'ble Supreme Court of India also clearly held that after the passport is seized and if the State was of the opinion that the petitioner was likely to flee the country or that he is at a flight risk, the only option available to the State or the prosecution is to file an appropriate application before the Passport Authorities to

impound the passport for the reasons mentioned in Section 10(3) of the Act. The Passport Authorities shall give a notice to the accused and after hearing the accused, they will have to pass an order. Since the cancellation of the passport is an order having severe civil consequences, the accused also has a right of being heard before the passport is impounded. The Passport Act being a special law will prevail over the general law.

In that view of the matter, irrespective of the fact that whether in the present case the issue relates to the voluntary deposit of the passport or deposit pursuant to an order of the Court, the fact remains that neither case is supported by the law. If the counsel made a wrong concession, the same cannot be enure to the benefit of the prosecution. A party should not suffer for any mistake committed by the counsel. If the same is a part and parcel of the lower Courts order, then it is clearly opposed by the law as interpreted by the Hon'ble Supreme Court of India in Suresh Nanda's case. Therefore, for both these reasons, this Court holds that the condition about the deposit of the passport cannot be imposed by a Court while granting bail or for any other reason. The only option left in such cases, when the passport is seized is to take steps under the Act for cancellation/impounding. Learned Public Prosecutor has stated that the original passport is lost and the accused has applied for a duplicate passport and has flouted the Court order. Basing on the written instructions received by him, he states that petitioner/A.1 is also liable for contempt of Court. This is also not correct and the order of the Court does not seem to suggest this. As mentioned earlier, neither the Court can impose such a condition nor can the counsel give a concession and deposit the passport. Even if the passport is deposited pursuant to the concession made by a counsel, the same cannot be retained indefinitely by the Court or the Police till the trial is concluded.”

10. As rightly contended by the petitioner, right to freedom of movement under Article 19 and right to life and liberty which includes livelihood under Article 21 of the Constitution of India are fundamental rights guaranteed. Therefore, to curtail such right(s) there must be due procedure established by law. In the present case, except due to a stray argument and unfounded apprehension, with a mere observation that for the purpose of expeditious trial, the Court ordered deposit of the passport.

11. If at all the petitioner had the original passport with him, since there is no Order of the Court or any authority to with-hold his passport, he was at liberty to move anywhere and there was no such apprehension earlier. As such without there being any condition in any order or circumstances showing that he may flee from trial, directing to deposit of passport would definitely violate the right of the petitioner both under Article 19 as well as Article 21 of the Constitution of India. Of course it is also brought to the notice of the Court, that the petitioner is accused in other case as well, but in those cases also, he obtained bail and no condition was imposed not to leave or to deposit the passport. The details of the same are furnished by the petitioner, as additional material papers. They were not under consideration while dealing with the petition in CrI.P.No.66 of 2022. So there is no need to refer them all here.

12. It may be appropriate to mention that in one case, a condition not to leave local limits of the Court without prior permission was imposed by III Additional Sessions Judge, L.B.Nagar vide Order dated 17.09.2020 in CrI.M.P.No.2696 of 2020 in Cr.No.384 of 2020, however the same was later on relaxed by Order in CrI.P.No.6067 of 2020 dated 25.11.2020 by the High Court of Telangana. As such by the date of passing the impugned Order, since there is no condition against him in dealing with the passport, the impugned Order can be set-aside to the extent of directing the Passport Authority to produce the reissued passport before the Court to keep in its custody until disposal of cases. The petitioner is at liberty to approach the same Court to get return of the passport which is in the custody of the Court.

13. In the result, the petition is allowed the Order dated 22.08.2022 passed in CrI.M.P.No.66 of 2022 in C.C.No.01 of 2017 is set aside to the extent of directing the Passport Authority to produce the reissued passport of the petitioner before the Court to keep it in its custody until disposal of cases. The trial Court is directed to return the passport of the petitioner on due identification and undertaking that the petitioner would cooperate for expeditious disposal of the cases and attend on every

adjournment, except when the Court dispenses with his presence as per law.

Pending miscellaneous petitions, if any, shall stand closed.

Dt. 28-04-2023
KLNS

B.S.BHANUMATHI, J

HON'BLE SRI JUSTICE B.S.BHANUMATHI

CRIMINAL PETITION NO.1729 OF 2023

Date: 28.04.2023

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