

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO. 575 OF 2024 (F)**

MR. ZAKAULLA KHAZI, S/o. Mr. Khasim khazi, 18 Years of age, Service R/o. H.No. 264, Near Swim Sea Hotel, Caranzalem, North-Goa, 403 004.

... Petitioner

Versus

1. STATE OF GOA, Through the Public Prosecutor, High Court of Bombay at Goa.
2. AGASSAIM POLICE STATION, Through the Public Inspector, attached to the Police Station, Agassaim - Goa.

... Respondents

Mr. Vibhav R. Amonkar, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.**DATED: 9th JULY 2024****ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith.
2. This matter is taken up for final disposal at the admission stage itself with consent.

3. Heard Mr. Amonkar appearing for the Petitioner and Mr. Bhobe, learned Public Prosecutor for the State.

4. An unusual condition is imposed upon the Petitioner while releasing him on bail by the learned Trial Court and when an Application was moved for modification of such an order, a further unusual condition has been put, which is challenged in the present proceedings.

5. The Petitioner is an Accused in connection with FIR No. 20/2024 registered with Agassaim Police Station for the offences punishable under Sections 307, 504, 506 (ii) read with Section 34 of the IPC. The Petitioner was arrested on 03.04.2024 and thereafter, he had applied for grant of bail before the learned Additional Sessions Court, which was registered as Bail Application No. 71/2024. After receipt of say from the investigating agency, the learned Additional Sessions Judge vide its order dated 23.04.2024 allowed such Bail Application and directed that the Petitioner be released on bail on furnishing a personal bond of Rs.50,000/- with one surety in the like amount. Certain other conditions were also imposed. The first condition was that the Petitioner was required to report to the Investigating Officer for 8 days between 10:30 a.m. to 1:00 p.m. The Petitioner

was not supposed to leave the Country without prior permission. The Petitioner was restricted from venturing near the house of the Complainant or near his College and was not supposed to threaten the Complainant and other witnesses.

6. Besides these, the other condition which is at serial no. 3 in the operative part of the order read thus:

“3. The Applicant to deposit the passport before the Court.”

7. Mr. Amonkar, appearing for the Petitioner, submits that though such a condition was imposed, it was pointed out to the learned Additional Sessions Court that the Petitioner does not possess any passport as on date. The memo on behalf of the mother of the Petitioner stating the said fact was placed before the Sessions Court, however, that was not considered at all.

8. Mr. Amonkar would submit that thereafter, the Petitioner filed an Application for modification of the said order and more specifically for modification of condition no. 3. The Petitioner also stated on an affidavit that the Petitioner never applied for a passport and therefore, he will not be able to produce such passport in compliance with condition no. 3 for releasing him on bail. The say of the Investigating Officer which was called for on

the Application for modification of the condition would reveal that the Investigating Officer categorically pointed out to the Court that it was revealed during the investigation that the Applicant never applied till date for a passport.

9. In view of such affidavit filed for modification and the statement of the investigating agency that the Applicant does not possess the passport and that he never applied for issuance of a passport, the learned Additional Sessions Court ought to have considered the Application for relaxation of such condition and at the most, could have directed the Petitioner to deposit the passport, if any. However, the learned Trial Court observed in the impugned order dated 13.05.2024 that since the condition is imposed at serial no. 3, the Accused must comply with it. Further, a strange course was adopted by suspending such a condition and directing the Petitioner to deposit the passport within a period of four months. The impugned order shows that the learned Additional Sessions Judge by suspending such condition no. 3 for four months thereby directed the Petitioner to surrender his passport within a period of four months.

10. Mr. Amonkar is justified in pointing out that by this impugned order, the learned Additional Sessions Court, first of all,

failed to consider the fact that the Applicant does not possess a passport and that he never applied for issuance of a passport and thus, there is no question of submitting the passport. He would further submit that by directing the Petitioner to deposit the passport on or before the expiry of four months would clearly mandate the Applicant to apply for a passport and only thereafter, to deposit it.

11. The impugned order clearly goes to show that the Additional Sessions Judge clearly failed to consider the fact that the condition which has been imposed at serial no. 3, ought to have been modified in the following manner:

“To deposit the passport, if any.”

12. Secondly, when an Application was moved for modification on the ground that the Petitioner does not have a passport and that he never applied for such a passport, condition no. 3 was required to be modified in the above manner. However, the impugned order shows that the learned Trial Court by the impugned order now directs the Petitioner to surrender his passport within four months. In other words, it means that the Applicant is directed to apply for the passport and on receipt of it, to deposit with the Court.

13. While imposing the condition for the grant of bail, the learned Trial Court does not have such power to direct any person to apply for a passport, obtain it and then surrender it. The direction to deposit the passport could be given only if the Petitioner or the Accused possesses it.

14. The unusual condition which has been imposed in the first place and thereafter, failed to modify it, clearly shows that the learned Additional Sessions Judge travelled beyond its powers and imposed such conditions, which is normally not required when granting bail.

15. The impugned order is required to be quashed and set aside and the Application filed for modification of condition no. 3 needs to be allowed by modifying condition no. 3 to the following extent:

“The Applicant to deposit the passport, if any”.

16. Mr. Amonkar has submitted that after suspension of condition no. 3, the Petitioner has already been released on bail. Thus, the condition no. 3 shall be modified as stated above.

17. Rule is made absolute in the above terms.

18. The Petition stands disposed of.

BHARAT P. DESHPANDE, J.