

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 22ND SEPTEMBER, 2014

:BEFORE:

THE HON'BLE MR.JUSTICE K.N. PHANEENDRA

CRIMINAL PETITION NO. 5528/2014

BETWEEN:

Shreyas Shetty
S/o Dr. Suresh Shetty,
Aged 30 years,
R/at No.73, Sai Krupa,
N.S. Palya Main Road,
2nd Cross, Dollars Colony,
Bannerghatta Main Road,
Bangalore – 560 064.

.. PETITIONER

(BY SRI. A.N. RADHA KRISHNA, ADV.)

AND:

State of Karnataka,
By Subramanyapura Police,
Bangalore, Represented by
The State Public Prosecutor,
High Court Buildings,
Bangalore – 560 001.

... RESPONDENT

(BY SRI. B.J. ESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING THAT THIS HON'BLE COURT BE PLEASED TO SET ASIDE THE ORDER DATED 19.08.2014 PASSED BY THE LEARNED II ADDL. CHIEF METROPOLITAN MAGISTRATE, BANGALORE IN CRI. NO. 348/2014 OF SUBRAMANYAPURA POLICE, BANGALORE AND FURTHER DIRECT THE LEARNED MAGISTRATE TO RETURN THE PASSPORT WHICH IS IN CUSTODY.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned Counsel for the petitioner and also the learned High Court Government Pleader. Perused the records.

2. The petitioner has sought for setting aside the order passed by the learned II Additional Chief Metropolitan Magistrate, Bangalore in Crime No. 348/2014 in rejecting to release the Passport of the

petitioner which was secured by the Court and kept in the safe custody. The learned Counsel for the petitioner submitted that there is no condition imposed in the bail order that he has to produce the said Passport. But orally the Court has directed the petitioner to produce the Passport and on production the same has been impounded by the Court for the reasons known to it. Immediately, the petitioner has made an application for releasing of the said Passport under Section 437 of Cr.P.C. The Trial Court has dismissed the said application on the ground that after obtaining the bail the accused has not been properly appearing before the Court and if the Passport is released to him he would definitely flee away from the country in order to protract the investigation and also the proceedings before the Court. Therefore, the Trial Court has rejected the said application.

3. The learned Counsel for the petitioner cited a decision of the Apex Court reported in :

“2008 Cri. L.J. 1599 (Suresh Nanda Vs. C.B.I.)

where the Apex Court held that :

“While the police may have the power to seize a passport under Section 102(1), Cr.P.C., it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967. Even the Court cannot impound a passport. Though, Section 104, Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled

that the special law prevails over the general law”.

It is further observed that :

“There is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document”.

4. In this particular case, admittedly the Police have not seized the Passport during the course of investigation. But at the time of granting bail the Court has secured the Passport and kept it in the safe custody

of the Court and it amounts to retention of the said document and virtually amounts to impounding of the said document, which is prohibited under the above said provision of law and also in view of the decision of the Apex Court. However, this Court also cannot ignore the observations made by the Trial Court with regard to the attendance of the accused and also he assisting the Investigating Officer in concluding the investigation and also if cognizance is taken by the Court, appearing before the Court regularly.

5. Therefore, in order to meet out the said apprehension of the Trial Court also, it is just and necessary for this Court to impose certain conditions while releasing the said Passport in favour of the petitioner. Therefore, I feel it just and necessary to

release the said Passport in favour of the petitioner on certain conditions.

6. Hence, the following Order is passed :

The petition is allowed. Consequently, the order passed by the learned II Additional Chief Metropolitan Magistrate, Bangalore in Crime No.348/2014 dated 19th August 2014 is hereby set aside. Consequently, the learned Magistrate is directed to release the Passport forthwith in favour of the petitioner. However, the petitioner shall abide by the following conditions :

- i) Petitioner shall not leave the Country without prior permission of the jurisdictional Magistrate during the pendency of the investigation or during the pendency of the case;
- ii) Petitioner shall assist the Investigating Officer as and when required by the

Investigating Officer for the purpose of interrogation or for any purpose for completing the investigation to submit the appropriate report before the Court;

- iii) If any charge sheet is filed and cognizance is taken and summons are issued to the accused, the accused shall appear before the Court on all future hearing dates, unless prevented by any genuine cause or exempted by the Trial Court.

If any conditions are violated the State is at liberty to move the Court for cancellation of bail.

With these observations, the petition is disposed of.

Sd/-
JUDGE

Rbv