

GJBN010010262026



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IN THE COURT OF 4TH ADDITIONAL SESSIONS JUDGE BHAVNAGAR

CRIMINAL MISC. APPLICATION NO.436 of 2026

Exh. ___

APPLICANT/ACCUSED:

Vasimbhai Rajakbhai Pancha,

Age : 33 years, Occupation: Business,
Residing at : Maz Park, Flat No.10, Bhilvada Circle,
Bhavnagar.

Vs.

OPPONENT:

The State of Gujarat.

APPEARANCE:

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 Mr. S.U.Hamirani, Learned advocate for the applicant,
 Mr. D.A.Mehta, Learned A.P.P. for the State.
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Application under Section 439(1)(b) of the Code of Criminal Procedure, 1973.

-: J U D G M E N T :-

[1] The present application has been filed under Section 439(1) (b) of Cr.P.C, seeking custody of passport deposited by the applicant before the Court of Ld. Chief

Judicial Magistrate Court, in furtherance of bail order passed in Cr.Misc. Application No.573 of 2015.

[2] Ld. Advocate for the applicant has submitted that the complaint was registered against the present applicant before the Gangajaliya Police Station, Bhavnagar vide Crime Register No.37/2015 for the offence punishable under Sections - 143, 147, 148, 149, 307, 186, 337, 332, 333, 120(B) of IPC and u/s. 3(1), 3(2), 3(2)(a), 3(2)(e) of Prevention of Damage to Public Property Act, 1984 and subsequent to his arrest, the applicant was released on regular bail by the learned 7th Additional Sessions Court, Bhavnagar vide order passed in Cr.MA No.573 of 2015 on dated 06.08.2015. It is further submitted that as per the condition No.7 of the said bail order, "surrender his passport, if any, to the lower Court". It is further submitted that at the relevant time, the applicant was not having passport and therefore, he declared such fact before the Ld.Court. However, now, the applicant wants to obtain passport to go at Makka-Madina for religious tour of Hajj purpose. However, as the said criminal case is pending in the Ld.Court, Passport issuing authority had instructed the applicant to avail necessary permission from the Court in which criminal case is pending. Therefore, the applicant had approached this Court by way of this application for seeking necessary permission.

[3] Per Contra, Ld. PP has appeared for the State and submitted that the application may be allowed with certain conditions.

[4] On going through the record, it appears that the present applicant is an accused in the Criminal Case No.9040/202015, involving offences under sections 143, 147, 148, 149, 307, 186, 337, 332, 333, 120(B) of IPC and u/s. 3(1), 3(2), 3(2)(a), 3(2)(e) of Prevention of Damage to Public Property Act, 1984, which is registered with Gangajaliya Police Station, Bhavnagar vide Crime Register No.37/2015. It is further appears that the said Criminal Case is pending before this Court. It is further appears that regarding the alleged offence the applicant has preferred Criminal Misc. Application No.573 of 2015, which was granted by the Ld.7th Addl.Sessions Court, Bhavnagar on 06.08.2015 with a few conditions and amongst them, the condition No. (7) is that "surrender his passport, if any, to the lower Court".

[5] It is further appears that at the relevant time, the applicant was not having passport and therefore, he declared such fact before this Court. Further, as per the say of the applicant, now, he is required a passport to go at Makka-Madina for religious tour of Hajj purpose. Therefore, it is pertinent to note that the applicant being on bail and involved in Criminal Case pending before the Ld. Court, it was incumbent upon the applicant to furnish details about pending criminal case against him before the Passport issuing authority. It is also evident that in cases where a

person seeking passport is involved in Criminal Case, the passport authority would require evidence supporting the disposal of the case or if the case is pending a permission from the concerned Court is required to be furnished in order to process the passport application. It is obvious that it is within the domain of the passport authority to decide whether to issue a passport as sought or not and the Court is not required to direct the passport authority to issue passport or not. Further it is evident from the perusal of documents that the since the applicant is on bail there is no instance of applicant having misused liberty granted to him.

[6] It would be pertinent to note that the applicant has sought issue of a new passport in his name for visit of religious tour of Hajj purpose at Makka-Madina. It is also to be borne in mind that merely because a case is pending against a person he cannot be deprived of obtaining passport. It is evident that police verification report is a part of procedure for getting passport and the applicant being arrayed as accused in the matter was required to furnish explanation to the passport authority regarding the offence registered against him. Therefore, it was within the jurisdiction of the Trial Court to entertain and adjudicate the application seeking permission to get the passport issued in the name of the applicant/accused.

[7] In this regard it would be relevant to quote the decision of Hon'ble Gujarat High Court in the case of "**Dhiren Baxi vs Regional Passport Officer**", reported in

2003(1) G.L.H. 1, wherein after considering the provisions of Sections 6(2) and 22(a) of the Passport Act and notifications dated 16.8.1979 and 25.8.1993, it was held in paragraph 10 as under:

*"In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2) (f) **provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications.** In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore, cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. **It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the***

notification. *In the present case, the passport authority has failed to bring the relevant notification to the notice of the applicant in spite of the fact that the application was pending before the authority for more than one-and-half years. In fact, it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2)(1). It is a matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today, the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner **of his right to apply to the Criminal Court for permission to travel abroad.** In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases"*

[8] Thus, it is abundantly clear that, an accused is required to obtain permission from the Criminal Court in a case where criminal case is pending. The issue as to whether this position would apply to cases where no condition has been imposed by the Court regarding deposit of passport while granting bail also needs to be considered in light of the fact that the accused who is on bail would be required to obtain permission of the concerned court as the issuance of passport may lead to hindrance in securing the presence of the accused for trial. Therefore, this Court is of the view that the applicant was justified in seeking permission of the Ld. Court for processing his passport issue application.

[9] Resultantly in view of the above legal position and considering the facts and circumstances of the present case this application deserves to be allowed. Hence, following order is passed.

:: O R D E R ::

1. The present application is conditionally allowed.
2. The applicant is hereby given permission to obtain his new passport, from the concerned passport authority, as per relevant rules and notification subject to following conditions:

1. The applicant shall file an undertaking on oath before this Court that he shall not leave India, pending trial, without prior permission of this Court.
2. The applicant shall submit his newly issued passport within 7 days from the date of its receipt before this Court.
3. *The regional passport authority, Ahmedabad is hereby directed to renew passport of applicant **for the period of five years.***

Necessary yadi be made accordingly.

Pronounced today in open Court on this **13th day of March, 2026.**

Date : 13.03.2026

Place : Bhavnagar

deraiya

(JIGNESH GIRISHBHAI DAMODRA)

4th Additional Sessions Judge,
Bhavnagar

Unique ID Code No.GJ00996