

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE, (SPE/CBI)-
III, ERNAKULAM**

Present :-

SRI. K.K. BALAKRISHNAN, SPECIAL SESSIONS JUDGE.

Tuesday, the 1st day of November, 2022/ 10th Karthika, 1944.

CrI. M.P. No. 2970 of 2022

in

S C No. 421 /2020

Petitioners/Accused No.32

P. Jayarajan, S/o Kunhiraman, aged 67 years,
Residing at Kairali, Pookode P.O., Pattiyam Amsom,
Kongatta Desom, Thalasseery Taluk,
Kannur District – 670643.

(By Adv. Sri. K. Viswan)

Respondent/Complainant

The Central Bureau of Investigation, Special Crime Branch,
Thiruvananthapuram, represented by Public Prosecutor – CBI.

(By Adv. Sri. M. S. Jayesh, Sr. Public Prosecutor)

This petition coming on for hearing on 19th day of October, 2022 in the presence of Counsel on both sides and having stood over for consideration till day the Court passed the following:

O R D E R

This petition is filed u/s. 6(2) (f) of the Passport Act, 1967 by the accused number 32 in the above case .

Contd.....

2. The petitioner contented that along with wife he is willing to visit and stay for a period of one month with their son, Jain P Raj, who is employed in Dubai and residing at Gold Sook, Dubai in Room No. 202, Galfan Building, Daiera. So he needed an Indian Passport to apply for a visa to go Dubai. No Objection Certificate issued by this Court is necessary for applying for Indian Passport. So he prayed to pass an order of No Objection to apply for passport for the above said purpose.

3. Against the petition, the investigating officer of the case filed objection that the petitioner committed grievous offences including offence U/s UAPA and Explosive Substances Act and is charged with conspiracy for murder. If the petitioner is allowed to obtain Indian Passport and permitted to leave the country, he shall stall the proceedings of this Court in the above matter and also likely to flee from the process of justice. He is also an accused in another murder case pending in this court. On these grounds, the respondent prayed to dismiss the petition.

4. Heard both sides.

5. The only question to be decided in the subject matter is that, whether a no objection can be granted to the petitioner to obtain Indian Passport ?

6. The latest judgment of Hon'ble High Court of Kerala in Thadevoos Sebastian Vs. The Regional Passport Office (2021(5) KLT 531) issued following guidelines in the subject matter of giving direction to the Passport Authority to issue temporary Passport to an accused in a pending criminal case.

“(i) The stage of the criminal proceeding and the duration of time within which the trial may take place;

(ii) The criminal antecedents and past conduct of the accused;

(iii) The nature and gravity of the crime; offences under Statutes dealing with acts of terrorism and acts of smuggling should require a different consideration.

(iv) In heinous crimes, if the court decides to grant permission, the period for which permission is granted can be limited;

(v) Chances of the accused fleeing or evading the trial in the case;

(vi) Mode in which the presence of the accused can be ensured during trial, including stipulating conditions like providing the address/ change of address in the country of residence abroad, either with the Indian Consulate at the country of residence abroad or with the Court where the trial is pending.

(vii) Since in cases where time is not fixed by the Magistrate while granting permission, the Passport authorities are issuing passports only for one year, the period for which the accused can be permitted to travel can also be fixed by the Magistrate, while granting permission.

21. The parameters laid down as above are not exhaustive. While granting permission, the criminal courts will do well to bear in mind that the ultimate aim of granting permission is to balance the competing claims of fundamental right to travel abroad and the need to ensure the presence of the accused during trial. Other reasonable safeguards to ensure the presence of the accused during trial can also be incorporated into the order granting permission, if the circumstances warrant it.”

7. The offences alleged against the petitioner and other accuse are U/s

143, 147, 148, 201, 324, 307,324, 341, 364, 506(i), 294(b), 447, 450, 302, 120B r/w. 149 IPC. The case is posted for hearing under section 227 of CrPC. So trial is not started in the matter. Considering the facts and circumstance of the case on hand, mere granting of no objection to apply for an Indian Passport shall not affect the preceding of the case. In the result the petition is allowed and following Order is passed.

(i)The petitioner is permitted to apply for Indian Passport valid for a period of one year and no objection is granted to issue an Indian Passport to him valid for one year only, to the petitioner, if otherwise he is eligible for the same.

(ii) The petitioner shall produce the original Passport issued to him with in 7 days after receiving it.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on this, the 1st day of November, 2022.

Sd/-

K.K. Balakrishnan
Special Judge, (SPE/CBI) – III

Appendix:- Nil

Id/-

Special Sessions Judge, (SPE/CBI)-III.

Typed by:-Apb/-
Compd by:- Sts/-