

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

Present :-

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

Thursday, the 10th day of November, 2022/ 19th Karthika, 1944.

Crl. M.P. No. 94 of 2022

in

C C No. 4 /2017

Petitioner/Accused No 2 :

Puthenveedu Joseph Mathew, S/o.Thomas
Joseph, Flat No.102, Kings Apartment, Juhu Tara
Road, Mumbai-400 049 Maharashtra.

By Adv. M.A.MOHAMED SIRAJ

Respondent/Complainant:-

Central Bureau of Investigation, represented
by its prosecutor, CBI-III Court, Ernakulam.

By Adv.M.S.Jayesh Public Prosecutor.

This petition coming on for hearing on 28th 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:

ORDER

This petition is filed by the second accused in the above matter for permission to renew his Passport for a period of ten years.

2. The petitioner says that his son is residing in United States of America with family. On 16.05.2018 he filed a petition to return his Passport, which is surrendered in the above matter, and permitting him to go abroad and the petition was allowed by this Court. But he was unable to go abroad due to a medical emergency. So he returned the Passport to this Court. The validity period of his Passport expired in the year 2020. He would like to go USA to meet his son and family and also to go Abudabi in order to meet his clients in UAE which is scheduled on 8th of next month. For obtaining visa of USA, his passport has the validity of ten years. The petitioner relied the judgment of the Honourable High Court in CrI. M.C. 7858/2019. It was held that in necessary cases, the concerned Court can grant permission to renew the Passport for necessary period.

3. Due to the pendency of other cases in this Court, there is no possibility to commence the trial of the above said case in near future. He petitioner shall not travel to any other country except USA and UAE. He will appear in the above matter as and when direct by this Court. He shall not dispute the proceedings to be held in his absence. He shall surrender the

Passport as and when came back from USA and also ready to comply with any conditions imposed by this Court. So he prayed to issue permission to renew his Passport bearing No. Z2194742 for a period of ten years.

4. Against the petition, the prosecution side filed strong objection. If a blanket permission for ten years is granted, the petitioner may not be available for trial and also may abscond in the above matter. Many witnesses of the case, are settled in various foreign countries and there are chances for influencing those witnesses by the accused. The petitioner has not produced any document to show the requirement of a Passport with validity of ten years. The case is ripe for trial and for framing of charges, the presence of the accused is mandatory. On this grounds, the respondent prayed to dismiss the petition.

5. Heard both sides.

6. The only question to be decided in the subject matter is that, whether no objection can be granted to the petitioner to renew his Indian Passport for a period of 10 years?

7. The learned counsel appearing for the petitioner argued that ten years validity for the Passport is mandatory to apply for visa to visit USA. Therefore prayed to give permission to renew the passport of the

petitioner with ten years validity. The learned Public Prosecutor seriously opposed this claim of the petitioner and submitted that if Passport with validity for ten years is issued, there is no chance for returning of the accused to the country and finally the trial of the case will be affected.

8. The Hon'ble High Court in the judgment in CrI. M.C.7858/2019, considered the facts involved in that particular case that Canadian Government insists for a validity of ten years in order to issue visa to visit that country even for a visit of shorter period. Here in the case on hand the learned counsel for the petitioner at the time of the argument submitted that there is documentary proof for the insistence of ten years validity for a Passport to visit USA and the proof shall be produced. But on the next posting date, the learned counsel submitted that there is no such proof for that condition. So this Court directed the petitioner to appear in person. In compliance of the direction of this Court, the petitioner appeared and replied that he needs to go UAE alone. So nothing is produced by the petitioner in support of the claim in the petition with respect to the condition of ten years validity for Passport as well as his visit to USA. The petitioner further replied that he is permanently residing in Mumbai and he is not in possession of anything in the state of Kerala. Therefore the facts and circumstance considered by Honble High Court in the above stated judgment is not applicable to the case on hand. In the absence of material

before this Court in support of the claim of the petitioner for issuing Passport with ten years validity period, that prayer of the petitioner is only shall be liable to be rejected. The petitioner's prayer that in order to visit UAE for a short period for meeting with his client in the month of November his passport is to be renewed is reasonable and justifiable.

9. 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.”

10. The offences alleged against the petitioner and other accuse are U/s. 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, U/s 120B and 420 IPC and U/s 24 of Emigration Act, 1983. The case is posted for hearing under section 239 of CrPC. Considering the facts and circumstance of the case on hand, mere renewal of his Passport for short period will not affect the proceedings of the case. In the result the petition is partly allowed and following Order is passed.

(i)The petitioner is permitted to renew his 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, 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 by me and pronounced in open Court on this the 10th 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