



Order Below Exh.772 in R.C.C. No. 824/2013
[CNR:MHKO030049102013]

This is an application filed by the accused namely Ushatai Sadashiv Powar for permission to apply for passport.

2) **The grounds stated in this application are as under :**

The accused is resident of proper Kolhapur. Present case is pending against her for the offence punishable under Sections 406, 420, 463, 464, 465, 467, 468, 470, 471, 167, 201 r/w.34 of the Indian Penal Code. In all there are 136 accused involved in the offence. The Accused is intending to go Abroad for tourism purpose. It is undertaken by the accused to abide by the conditions, which would be imposed against her.

3) Learned A.P.P. has filed his say and objected the application by submitting that, the presence of accused person is necessary for trial, and if no objection is given for issuance of the passport, then there is a chance of absconding of the accused person.

4) Heard both sides. Perused the record. As per the record, the accused is alleged to have committed an offence punishable under Sections 406, 420, 463, 464, 465, 467, 468, 470, 471, 167, 201 r/w.34 of the Indian Penal Code. It is alleged against her that, she has obtained false disability certificate from the Government.

5) As per the notification No. R 570(E) dated 25.08.1993, issued by the Ministry of External Affairs, it has been mentioned as

under:

" hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of clause (f) of subsection (2) of Section 6 of the said Act, subject to the following conditions, namely :

(a) the passport to be issued to every such citizen shall be issued (i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

.....

(e) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad. "

6) As per the above quoted notification, order of the concerned court is necessary for issuance/renewal of the passport of the person against whom criminal case is pending therein. In this context, Sec.6 of the Passports Act, 1967 is also necessary to be quoted as under :

" Sec.6 Refusal of passports, travel documents etc.

(i) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of subsection (2) of section 5 on any one or more of the following grounds, and no other ground, namely :.....

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of subsection (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India."

7) In the case of Deepak Dwarkasingh Chhabria, AIR 1997 Bom 181 the Hon'ble Bombay High Court has referred to the above quoted notification and has held 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."

8) In the case of **Shayam Dwarkadas Chabria, 2000 Cri.L.J. 2942** the Hon'ble Bombay High Court has quoted the aforesaid observations and has held as under :

"A bare reading of this Notification makes it clear that an application for 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."

9) Thus, on the basis of above cited authority, case laws and notification dated 25.08.1993, the legal position is that the issuance/renewal of passport is subject to the permission of this court.

10) In view of the above, it is to be decided as to whether such permission can be granted to the accused or not.

11) As noted earlier, the accused is permanent resident of Kolhapur. The offence alleged also is not punishable with capital punishment. Therefore, considering her previous record and attendance in this case, there are no justifiable grounds for rejecting the application. Resultantly, the following order :-

ORDER

- 1) Application is allowed.
- 2) The accused namely Ushatai Sadashiv Patil is hereby permitted to apply for issuance of passport and no objection is given for that purpose but, subject to the Passport Rules and scrutiny thereunder.
- 3) The accused to furnish her personal bond of Rs.15,000/- (Rupees Fifteen Thousand only).

- 4) The accused to remain present in the Court as & when ordered and directed by this Court or any other Higher Courts in connection with present case.
- 5) The accused shall take prior permission of this Court whenever she intends to go out of India.

Kolhapur.
Date: 08/09/2021.

Sd/-
(A. A. Bhosale)
2nd Addl. Chief Judicial Magistrate,
Kolhapur.