

ORDER BELOW EXH. 32 IN SPECIAL CASE NO. 27 OF 2021

The State of Maharashtra	Prosecution
<i>Versus</i>	
Dr. Pralhad Narayan Devkar	Accused

1. Present application is moved by the applicant/accused no. 1 Shri. Pralhad Narayan Devkar, for grant of permission for renewal of his passport, for issuance of visa, for issuance of Police Clearance Certificate in the name of applicant/accused no. 1 and permission to go abroad at Dubai.

2. According to the applicant/accused no. 1, he came to be arrested by Anti Corruption Bureau, Ratnagiri in connection with Crime No. 64/2019 registered at Ratnagiri City Police Station for the offences punishable u/s. 7 and 12 of the Prevention of Corruption Act, 1988 wherein certain allegations were levelled against him. The applicant/accused no. 1 was released on bail and subsequently chargesheet against him, after completion of investigation, was filed and on the basis of said chargesheet, the instant case came to be registered against him.

3. It is further contended that the applicant/accused no. 1 is having passport bearing No. JO194527 which came to be issued on 22/03/2010 and the same is expired on 21/03/2020. It is next contended that the daughter of applicant/accused no. 1 viz., Dr. Neha Pralhad Devkar is practicing at Sadavali, Devrukh Tal. Sangmeshwar District Ratnagiri and with regard to her marriage, one proposal from

Jadhav family has been offered to applicant/accused no. 1. The son of Jadhav is presently residing and doing his business at Dubai. It is further contended that in order to seek detailed information regarding marriage proposal the applicant/accused no. 1 is much anxious and desirous to visit Dubai. He is interested to verify personally the nature of business of Mr. Jadhav at Dubai as the entire future of his daughter would be dependent upon personal, financial and business status of Mr. Jadhav. The applicant/accused no. 1 accordingly wants to travel abroad i.e. at Dubai and in that case he is required to renew his passport and obtain visa to visit Dubai. As the instant case against the applicant/accused no. 1 is pending in this Court, he is unable to get either passport and visa as well without prior permission of this Court and as per the provisions of law and notifications, it is necessary for applicant/accused no. 1 to seek permission from this Court for renewal of passport and for obtaining visa.

4. It is next contended that for renewal of passport and for obtaining the visa, Police Clearance Certificate is also necessary. It is submitted that the applicant/accused no. 1 wants to go to Dubai and soon after completion of the above referred task, he would come back to India. According to applicant/accused no. 1, he is a Government servant and presently deputed as Addl. Civil Surgeon at CPR Hospital, Kolhapur and having his permanent abode at village Sadavali, Devrukh Tal. Sangmeshwar Dist. Ratnagiri and hence, there is no question of fleeing away from justice. The permission, in case, is not granted then applicant/accused no. 1 would be deprived to renew his passport and to get visa. In that case, he would not be able to visit Dubai and verify the personal status, business status of Mr. Jadhav.

5. It is next submitted that applicant/accused no. 1 would submit the entire details of his duration of stay at Dubai and further assures that he would report to this Court after his arrival from Dubai. Accordingly, the applicant/accused no. 1 has moved the present application with the prayers as stated hereinabove. In support of his contentions, the applicant/accused no. 1 has produced on record photo copies of application for re-issuance of passport and passport.

6. The learned A.P.P. vide his say at Exh. 34, objected the application on the grounds that Special Case No. 27/2022 is pending against the applicant/accused no. 1 and in the event of his going abroad, there is every possibility that the applicant/accused no. 1 would not remain present on the dates fixed for hearing of this case. It is further submitted that permission may not be given till the final disposal of the instant case. Investigation in respect of property and income of applicant/accused no. 1 and his wife is in progress. As such, considering the nature of the offence levelled against the applicant/accused no. 1, it is submitted that the application be rejected.

7. Heard learned Advocate Smt. M.N.Athalye for the applicant/accused no. 1. She argued on the line of application and placed reliance on the following notification and the decisions :

- i) Notification of Ministry of External Affairs dated 25/08/1993
- ii) Mr. Krishna Chiranjeevi Rao Palukuri Venkata Vs. The Union of India and Ors. (Writ Petition No. 9141/2020 decided on 01/10/2020 by Hon'ble Karnataka High Court.

- iii) Balvindar Singh Sarjeet Singh Vs. State of Maharashtra (Criminal Application No. 579/2018 decided on 30/10/2018 by Hon'ble Bombay High Court.
- iv) Asutosh Amrit Patnaik Vs. State of Orissa & Ors. (Writ Petition (C) No. 4834/2022 decided on 23/03/2022 by Hon'ble Orissa High Court.
- v) Kasturi Rajupeta Vs. Union of India (2022 LiveLaw (Kar) 80

8. The learned A.P.P. for the prosecution argued as per its say.

9. I reflected over the submissions advanced by both the sides. I have also gone through the entire record of the case. I have also gone through the citations placed on record. As regards the aspect of maintainability of the present application, it is pertinent to note that the Hon'ble Bombay High Court while dealing with the case in Ms. Chandbibi Zaidi Vs. Union of India and Anr. reported in 2019 ALL MR (Cri) 423 was pleased to observe as under :

“It appears that in exercise of this liberty, the Petitioner sought “No Objection Certificate” for the purpose of restoration of passport. The trial Court therefore could have looked into the said Application in the light of notification dated 25.08.1993 and then passed the suitable order in terms thereof. We have already found supra that orders dated 19/11/2013 in Criminal Writ Petition No.1543/13 did not prohibit trial Court from considering request made in terms of notification dated 25/08/1983”

10. Thus, it is obvious that present application is maintainable before this Court. Now as regards merits of the case, it can be noted that the applicant/accused no. 1 is a Government Servant working as Addl. Civil Surgeon and posted at CPR Hospital, Kolhapur. He has movable

and immovable property at village Sadavali, Devrukh Tal. Sangmeshwar Dist. Ratnagiri. Moreover, the applicant/accused no. 1 has already furnished the surety so as to secure his presence during trial. As such, I am of the considered opinion that there is no hurdle in allowing application.

11. As regards the another prayer of visit to Dubai i.e. out of India for 8 days to verify the personal status and business status of Mr. Jadhav regarding proposal to his daughter, the applicant/accused no. 1 is ready to give undertaking to that effect.

12. The Hon'ble Bombay High Court while dealing with a similar aspect in **Jeetsingh Kalirai, Asstt. Collector Vs. Kulbir Singh Ahuja (1989 Law Suit (Bom) 619** was pleased to hold that “ the accused may be permitted to leave the jurisdiction of the Court, may be outside India.” Relevant portion of the Judgment reads as under :

“ In all such cases it is not that once a case is registered against an accused person, he cannot be allowed to go out of the jurisdiction of the Court at all. It is well known that these days the cases do not get over within a short time and if any such thinking is permitted it might as well mean confinement of the accused without trial for years, which is patently improper and illegal. Therefore, each case has to be considered on its own merits and when accused makes an application for the purpose of leaving the jurisdiction of the Court, may be out of Bombay, may be outside India, such an application has to be considered on its merit and the facts and circumstances of each case.

Therefore, the only question in the present case is as to whether the order is sufficient as to ensure the presence of the accused at the time of the trial. In the present case respondent No. 1 has stated on oath that he is prepared to give an undertaking that he would come back as and when

required by the learned Magistrate for the purpose of the trial. He has also stated that he is prepared to submit himself to such terms and conditions as the Court thinks proper for the purpose of granting such application. Now, the question is as to whether we can accept the word of the accused.”

It has been held by the Hon'ble High Court of Patna in **Abhinav Sinha Vs. Union of India (2006 Law Suit (Pat) 893** as follows :

“Having considered the rival submissions, I am inclined to accept to the prayer of the petitioner, petitioner shall be allowed to visit Germany and for the matter any other country in connection with his employment for a period of 2 years subject to the conditions that in case he is required to appear between the aforesaid period, he shall present himself on the date so directed.”

Similar view has also been taken by the Hon'ble Kerala High Court in case of **Mohammad Abdul Samad Vs. State of Kerala Crl. MC No. 5249 of 2014 Kerala High Court** and held as under :

“ I find that the request of the petitioner to release his passport will have to be properly and judiciously considered by the trial court. In view of the order of this Court in Crl.M.C. No. 1862/2014 permitting the other accused to go abroad, the question of releasing the petitioner's passport can be considered by the trial court, and if it is found that his request is genuine that he is really employed abroad, or that he wants to go abroad in search of job, the passport can very well be released and permission to go abroad can be granted by the trial court. Only the trial court knows how much time will be taken to complete the trial, or whether his physical presence is actually required throughout. Any way, passport can well be released on making reasonable security deposit, and permission to go abroad will have to be granted by the trial court on a consideration of all the circumstances including the time which will be taken for conclusion of trial.”

In the case of **Mustafa K. & Ors. Vs. State of Kerala Crl. MC 394/2014 of Hon'ble High Court of Kerala** has held as follows :

“ 2. The petitioners surrendered their passport and complied all conditions imposed. Petitioner's visa expired on 23/12/2013, 04/01/2014 and 19/12/2013 respectively. It is submitted that, if they are not permitted to travel abroad immediately, and allowed them to renew the visa, they will lose the job and the same will cause irreparable injury and hardship to the petitioners. The petitioners filed CMP No. 3875/2013 before CJM Court, Thalassery seeking permission to travel abroad and allow them to renew the visa. Vide order dated 10/12/2013, copy marked as Annexure B, the Court below rejected the permission to travel abroad. For the reasons stated by the petitioners, it is become just and necessary to release the passport so that the petitioners can travel abroad and continue his job there. Crl M.C. is allowed. Annexure B order is quashed. The petitioners are permitted to go abroad. There will be a direction to the learned Magistrate to release the Crl. M.C. No. 394/2014 passport to the petitioners for the purpose of stamping visa and travel abroad subject to such conditions imposed by the Chief Judicial Magistrate. Accordingly, the condition No. 5 in the bail order is deleted. ”

The Hon'ble High Court Delhi in the case of **Suresh Nanda Vs. CBI (2011 Law Suit (Del) 2890)**, it has been held that permission may be granted to the accused to go abroad and held as under :

“In the facts and circumstances of the case, the learned Trial Court is thus directed to permit the Petitioner to go to London for a period of two weeks on his furnishing a fresh itinerary, giving the address where he would be staying in London, subject to the further condition that Petitioner will submit a security in the form of documents of a self owned property worth Rs.50 crores.”

The Hon'ble Kerala High Court has in **Muskan Vs. State of Kerala & Anr. CrI. M.C. 3950/2014** also considered that the question of grant of permission to the accused person to go abroad for his employment and held as follows :

“ It may be mentioned here that the case is of the year 2014. It is not known as to how much time will take for the disposal of the case in that Court considering the number of pendency of cases in that Court. Further, merely because the person has been involved in the crime and made an accused and facing the trial cannot be a ground to deny him an employment opportunity to be obtained abroad. But, at the same time, effective safe guards will have to be taken by the Court while granting permission to secure his presence before the Court.”

13. In the lights of the law laid down in the Judgments of various High Courts including our own Hon'ble High Court it has been very well settled that a person, who has been made an accused in criminal case and facing trial cannot be denied to go abroad. If it is found that his request is genuine that he is really wants to go abroad permission to that effect can be granted by the Court.

14. In the instant criminal case as stated earlier applicant/accused no. 1 came to be chargesheeted for the offences punishable u/s. 7 and 12 of the Prevention of Corruption Act. The trial against the accused is yet to be commenced and it shall take sufficient time for its conclusion. At the same time, it is significant to note that if the applicant is not permitted to travel abroad immediately, he would not avail the opportunity to verify the personal and financial status of the proposal for his daughter and the same would adversely affect the future

of daughter of applicant/accused no. 1. However, that does not mean that he may be allowed to go abroad without imposition of certain conditions.

15. The applicant/accused no. 1 has assured that he would submit the entire details of his duration of stay at Dubai and also assured that he would report to this Court after his arrival and is ready to give undertaking to that effect. The applicant/accused no. 1 has asked for permission to go abroad only for 8 days which is not a much longer period.

16. Considering all the facts and circumstances of the case in hands and keeping within the scope of considerations the law laid down by various Hon'ble High Courts including the Hon'ble Bombay High Court in the Judgments cited supra, I am of the considered opinion that the application moved by the applicant/accused no. 1 deserve to be allowed partly, however, subject to certain conditions. Hence, I am inclined to pass following order.

ORDER

1. The application Exh. 32 stands partly allowed.
2. The Passport Authority of India may renew the passport of applicant/accused no. 1 i.e. Dr. Pralhad Narayan Devkar.
3. The Visa Authorities may issue visa for particular period in the name of applicant/accused no. 1 i.e. Dr. Pralhad Narayan Devkar.

4. The P.I. of Ratnagiri City Police Station may issue Police Clearance Certificate in the name of applicant/accused no. 1 i.e. Dr. Pralhad Narayan Devkar.

5. The applicant/ accused no. 1 viz., Dr. Pralhad Narayan Devkar is permitted to go abroad i.e. Dubai on condition that the applicant/accused no. 1 shall file an affidavit of undertaking and his personal bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one or two solvent surety/s.

6. The applicant/accused no. 1 shall submit copy of his passport and copy of visa to this Court. The applicant/accused no. 1 shall also furnish his correct address of residence in abroad and the details of period of his stay in abroad to this Court.

(Pronounced in the open court.)

Date : 25 / 05 / 2022.

(M.Q.S.M.Shaikh)
Judge, Special Court,
Ratnagiri.

I affirm that the contents of this Pdf file order are same words as per original order.

Special Case No.	:-	27/2021 (Order. below 32)
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Special Court, Ratnagiri.
Date of Decision	:-	25.05.2022
Order signed by P.O. on	:-	25.05.2022
Order Digitally signed on	:-	25.05.2022
Order uploaded on	:-	25.05.2022