

-: Order Below Exh.54 :-

01 Accused Rajanishranjan Mishra has filed present application seeking custody of pass-port, seized by Kudal Police Station in this case during investigation. Offences punishable under section 498-A,506,507 of the Indian Penal Code are registered against the accused. It is the say of accused that he is working as Advisor Sales Outsourcing in C.S.C.,Company at Mumbai. He uses the pass-port while proceeding to abroad for his personal and official work. The investigation of the crime registered against the accused is completed and Kudal Police have filed charge-sheet in Kudal Court. Previously, he had obtained temporary-possession of seized pass-port and as per the terms and conditions put upon him by the Court, he had deposited the pass-port in the Court. According to him, his original pass-port is deposited in the Court, but as he often requires to go to abroad, he is facing trouble for want of his pass-port. Therefore, he has prayed to hand over custody of seized pass-port to him. He is ready to abide by the conditions which will put upon him by the Court while handing over the said pass-port.

02 On behalf of the State, learned A.P.P, has filed say (Exh.56) contending therein that the accused has not specifically mentioned for which reason he requires the seized pass-port. This Court while granting bail to the accused had put condition to deposit his pass-port as the accused is residing of other State. If the seized pass-port is handed over to the accused, then there is possibility that he will be absconded as his relatives are settled in foreign countries. Therefore, application may be rejected.

03 On perusal of record of this case, it is seen that on 24/3/2014 the accused had filed application requesting to hand over him the seized pass-port as he is required to go at U.S.A, for his business meeting. On 27/3/2014 the learned predecessor Court has rejected the said application. Thereafter, accused challenged the said order by filing Criminal Revision Application No.25/2014 in the Court of Session,Sindhudurg at Oros. The said Revision Application is allowed by the Hon'ble Sessions Court on 11/4/2014. The order of the Hon'ble Sessions Court is produced at Exh.40. It reads that applicant has abide all the conditions imposed by the Trial Court, while releasing him on bail. Even previous, he has redeposited the pass-port in the Court, when it was handed over to

him for some interim period. Therefore, it cannot be accepted that applicant may abscond, if pass-port is handed over to him. The Hon'ble Sessions Court has further cited the observations in the case of Suresh Nanda Vs. CBI (Arising out of S.L.P. (CRL) 3408 of 2007) Apex Court observed that:

“ 15. In out opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C., states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passport Act is a special law while the Cr.P.C., is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation(9th Edition Pg.133) This principle is expressed in the maxim Generalia specialibus non derogant. Hence, impounding of passport cannot be done by the Court under Section 104 Cr.P.C., though it can impound any other document or thing.”

In view of this legal position, the Hon'ble Sessions Court, Sindhudurg at Oros has observed that the Court cannot retain the passport in its custody, if seized by the Police.

04 It is to be noted that previous application exh.18 filed by the accused for handing over him the pass-port for proceeding to U.S.A., to attend company's meeting. Now, the accused by filing present application has contended that due to non-possession of pass-port with him, he is facing difficulties in proceeding to abroad for his personal and official work. That means, it is the intention of the accused that his pass-port may be handed over permanently in his possession. No doubt, the accused has contended that he is ready to abide the conditions put upon him by the Court if the pass-port is handed over to him.

05 The present case is filed against the accused for the offences punishable under Section 498-A, 506, 507 of the I.P.C., and Sections 66-A, 67 of the Information Technology Amended Act 2008. Admittedly, the accused is resident of another State and at present he is residing at Mumbai (Maharashtra State). Considering the nature of the allegations in this case, the presence of accused is necessary at the time of hearing. The learned A.P.P., has filed say that there is possibility that accused would abscond if the pass-port is handed over to him. Considering the apprehension of the prosecution, the

nature of offence alleged against the accused, though the accused has submitted bail bond, I am of the view that it is necessary to direct the accused to furnish idemnity bond in the sum of Rs. 5,00,000/- from the accused while handing over the passport to him. The early disposal of the case is depending upon the presence of the accused in the Court. Some other interim applications are pending in this case. In such circumstances, though this Court has no right to retain the custody of the passport belonging to the accused, for the speedy disposal of the case, it is necessary to allow the application of the accused on some terms and conditions upon him in order to secure presence of the accused in the Court .

06 In view of this discussion, I am of the opinion that the impounded passport is required to be handed over to the accused, as claimed by him subject to certain terms and conditions upon him in order to secure his presence and production of document in the Court as and when required. In the result, I pass following order:

∴ Order ∴

- 01 The application is allowed.
- 02 Passport deposited by the accused in the Court while releasing him on bail, be handed over in the interim custody of the accused, by keeping its true-copy on record and on furnishing indemnity bond in the sum of Rs.5,00,000/--along with following certain conditions:
 - A) That he will produce the said passport in the Court as and when required.
 - B) He shall proceed to abroad with prior intimation and details of the tour to this Court, till the disposal of this case.
 - C) That he will not abscond any where till the disposal of present case.

Date:22/5/2015

(Jaywant C.Yadav.)
Judicial Magistrate,F.C.,Kudal

