

Filed on/Registered on: 06.10.2022;

Filing no./Registration no.: CRMA-S/976/2022;

F.I.R. No.: I-36/2016 dated 22.12.2016;

Under sections: 143, 147, 148, 149, 307, 323, 504, 506(2) of Indian Penal Code

& 135 of G.P. Act;

Sessions Case No.11/2018;

Police Station: Palej, Bharuch;

Date of decision: 12.10.2022.

IN THE COURT OF 5TH ADDITIONAL SESSIONS JUDGE AT BHARUCH.

CRIMINAL MISCELLANEOUS APPLICATION (SEEKING PERMISSION TO APPLY FOR ISSUANCE OF PASSPORT) No.:976/2022.

In the matter of:

Pathan Minhajkhan Mahmadkhan,

Religion: Muslim, Aged: 31 years, Occupation: Labour,

Resident of:

Kalpana Nagar, Palej,

Taluka & District: Bharuch.

.....Applicant

Versus

State of Gujarat,

Through Learned Public Prosecutor,

Office functional at:

District and Sessions Court Building.

Bharuch.

.....Respondent

APPLICATION UNDER SECTION 439(1)(b) CRPC SEEKING PERMISSION TO APPLY FOR
ISSUANCE OF PASSPORT.

Argued by:

1. Learned Advocate Mr. M.I. Kunda appearing for and on behalf of applicant – accused.

2. Learned Additional Public Prosecutor Ms. G.V. Vyas appearing for and on behalf of respondent herein.

:: J U D G E M E N T ::

1. Present application has been moved by applicant herein, praying for grant of permission to him to apply for issuance of new passport, as present criminal case is pending against him before this court.

2. Notice of present application was duly served upon respondent, who in compliance of said notice appeared before this court through Learned Additional Public Prosecutor Ms. G.V. Vyas.

3. Arguments advanced by Learned Advocates appearing for their respective parties:

Learned Advocate Mr. M.I. Kunda appearing for applicant herein, while reiterating the contents of present application further submitted that in C.R. No. I-36/2016 which was registered against applicant herein along-with other co-accused at Police Station: Palej, Bharuch; charge-sheet has already been filed against applicant herein which has been registered as S.C. No.11/2018. Mr. Kunda further submitted that after grant of bail to applicant herein in above-mentioned FIR, applicant has never violated any condition imposed upon him in the said bail order. Mr. Kunda further submitted that applicant herein does not possess a passport, therefore, intends to get a new passport issued in his favour from the concerned passport office for which he needs permission of this court to apply for the same, as criminal case is pending against the applicant herein before this court. In light of above made submissions, Mr. Kunda prayed to this court that permission be granted to applicant herein to apply for passport, as per the prescribed rules.

Per contra, Learned Additional Public Prosecutor Ms. G.V. Vyas appearing for respondent herein submitted before this court that looking at the nature of allegations

and gravity of offense, present application of applicant herein be rejected to secure the ends of justice.

4. Appreciation of arguments and final order:

Heard Learned Advocates appearing for their respective parties. This court has also perused the supportive documents forming part of application on hand. Perusal of CIS downloaded copy of order dated 05.01.2017 at Mark 3/2 passed in CRMA S:590/2016 by court of the then Learned 3rd Additional Sessions Judge, Bharuch, reveals that while granting concession of anticipatory bail to applicant herein in FIR bearing C.R. No. I-36/2016 registered with Police Station: Palej, Bharuch, applicant by way of condition no.01 of final order was directed to deposit his passport with Nazir, District Court, Bharuch and if does not possess the same, then file an affidavit to that effect. Thereafter, charge-sheet was filed against applicant herein, which was committed to Court of Sessions and the matter was registered as SC/11/2018, which is pending adjudication before this court. Perusal of R&P of SC/11/2018 reveals that in compliance of condition no.01 as passed in CRMA-S:590/2016 by court of the then Learned 3rd Additional Sessions Judge, Bharuch, an affidavit was filed by applicant herein before the concerned Investigation Officer that he does not possess a passport, copy of which is found to be on record of SC/11/2018. Further, this court has called for a report of Nazir, District Court, Bharuch, for substantiating the factum, as to whether any passport was submitted by applicant herein with Nazir, to which Nazir has replied in negative.

Perusal of record of SC/11/2018 reveals that charge has been framed against applicant herein, but recording of evidence is yet to be started. In given circumstances, as trial will take long time to reach to its logical conclusion, this court does not find any legal impediment to grant permission to applicant to apply for issuance of passport during the pendency of present trial, if not issued earlier. Further, it is not the case of respondent that applicant herein has violated his concession of bail or has misused his liberty. Applicant herein has been appearing before this court to contest the present matter and it appears that his prayer of grant of permission to apply for

issuance of passport is not filled with any malafides. Further, this court has also perused the copy of office memorandum bearing no.VI/401/1/5/2019 dated 10.10.2019 issued by Govt. Of India, Ministry of External Affairs, PSP Division, which has been annexed with application on hand, and perusal of said memorandum reveals that as criminal case is pending against applicant herein, therefore, with an order of the court, applicant could be issued a short validity passport of one year validity or for the period specified by the court.

In light of observations made hereinabove, this court is of considered view that there will be no adverse impact on the criminal case pending against applicant herein, if permission to apply for passport is granted to applicant herein, therefore, this court is inclined to exercise its discretion in favour of applicant herein, hence, the following final order:

:: FINAL ORDER ::

1. This CRMA-S No.976 of 2022 is hereby allowed. Applicant herein is granted permission to apply for issuance of passport for a period of 10 years, as per rules. It is clarified that application for issuance of passport of applicant herein for a period of 10 year shall be subject to rules applicable to the concerned passport office and if the said issuance of passport for 10 year is not permissible in law, then passport office will be at liberty to issue the same for permissible period, provided in the rules following the procedure established by law.
2. For clarity sake, observations made herein above by this court is qua a specific purpose, i.e., for grant of permission to applicant herein for applying for issuance of passport only, which shall be adjudicated on its own merits by passport office as per rules and further, while deciding the said application of applicant herein on merits, passport office shall not be influence by observations made by this court in present order.
3. Further, if passport is issued in favour of applicant herein as per rules; applicant herein is directed to deposit his passport with court immediately upon receipt of same by him. It is clarified that this order shall not be construed as permission to applicant herein to leave the territorial limits of India.
4. Copy of this order be sent to concerned passport office, Learned Trial Court and Investigation Officer.

5. Further, observations made herein above by this court shall not affect the merits of the case.
6. File of present application be consigned to record room after due compliance as per rules.

Signed and pronounced in open court on 12th October, 2022.

Place: Bharuch.

Gaurav Deepak Yadav,
5th Additional Sessions Judge,

Bharuch.

Code: GJ01598.