

Special Case No. 21/11

Order No. 60

Dtd. 13.02.17

The case is fixed for further evidence. Out of 07 accused persons, accused Rakesh Kumar Mahotra on c.b. is present and the case against 2 accused persons has already been filed and remaining 4 accused persons are absent by petitions represented through their respective lawyers. A

Petition is filed on behalf of accused no. 6 Rakesh Kumar Mahotra praying for renewing/reissuing his Passport for another 10 years as the Passport has expired on 12.12.16 with further prayer for necessary direction to the Regional Passport Office, Bareilly, UP to that effect. In support of the prayer Ld. Advocate appearing for the accused person refers to the Order of this Court dtd. 10.01.17 wherein prayer for renewal of the passport has been allowed on the prayer for the accused person. But the concerned passport office could not re-issue/renew the passport for another term as the period of extension has not been specified by the aforesaid order of the Court and a clarification has been sought for from the concerned passport office by letter dtd. 20.01.17 in terms of notification G.S.R. 570 (E) dtd. 25.08.93 which is placed before the Court at the time of hearing.

I have gone through the above mentioned notification issued by the Ministry of External Affairs, Government of India wherefrom I find that the Government has made provisions for getting passport for those persons with the permission of the Court to depart from India when criminal case is pending against those persons and in that case the passport can further be renewed on the basis of fresh Court order specifying a further period of renewal.

But in this case, passport of accused no. 6 was issued on 13.12.2006 long prior to the initiation of this criminal proceedings without the intervention of this Court and so the question of renewal of the passport by the order of this Court does not arise at all. In other words, it can be said that if the passport is not issued by the order of the Court specifying certain period, the question of re-issuing/renewing the passport specifying further term does not arise for consideration.

If, however, during the pendency of any Criminal Case the passport is issued by the order of the Criminal Court specifying certain period permitting the accused to depart from India, in that case the above mentioned notification is applicable for re-issuing/renewing the passport specifying another term but as stated above the passport of accused no. 6 was issued by the concerned authority when there was no criminal case pending before this Court.

In my view, the above mentioned notification has been mis-interpreted which has misdirected my predecessor in office in-charge to pass the impugned order dtd. 10.01.17. Issuance and renewal of passport is an executive action and the Court cannot give any direction in that matter. The Court can pass necessary direction for issuance of passport only when there is criminal case pending. If the passport is issued for the first time by the Order of the Court during the pendency of criminal case in that case only the court can pass necessary direction for renewal of the passport. But the case is different here as passport has been issued when there was no criminal case pending and so the above notification is not applicable in this case for getting renewal of the passport with the permission of this Court. If the notification in question on the basis of which the impugned order dtd. 10.01.17 has been passed is not applicable in this case, this Court cannot give permission for renewal of the passport as sought for and impugned order dtd. 10.01.17 to that effect is hereby recalled in the interest of criminal administration of justice.

The accused no. 6 Rakesh Kumar Mahotra is however given liberty to apply for renewal of passport before the competent authority in accordance with law without the intervention of this Court. The petition of accused no. 6 filed today is accordingly disposed of.

To 25.04.17 for further evidence.

Dict. & Corr. By me:-

**Judge, 3rd Special
(CBI Designated) Court,
Bankshall Court, Calcutta**