
(2012) 09 GUJ CK 0054

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 13398 of 2012 In Criminal Appeal No. 1385 of 2011

Chaudhary Manishbhai Sendhabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Citation : (2012) 09 GUJ CK 0054

Hon'ble Judges : Mohinder Pal, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : N.P. Chaudhary and Mrtusharchaudhary s, for the Appellant; Moxa Thakkar, Public Prosecutor for Respondent(s) : 1, for the Respondent

Judgement

Honourable Mr. Justice Jayant Patel

1. RULE. Ms. Moxa Thakkar, learned APP, waives service of notice of rule on behalf of the respondent. The present application has been preferred by the applicant-original accused for handing over of the passport, bearing No. F9460238.

2. We have heard Learned Counsel appearing for the applicant, Mr. Chaudhary and learned APP, Ms. Thakkar, for the respondent.

3. It appears that the issue, which arises for our consideration is covered by the earlier decision of this Court, dated 26.04.2012, in Criminal Miscellaneous Application No. 4824 of 2012, whereby, in the very appeal, after taking into consideration the facts and circumstances of the case for other co-accused, this Court had passed the following order:

Rule. Mr. KL. Pandya, learned APP waives service of notice of rule.

1. The present application is preferred by the applicant, who is original accused No. 25 in the Criminal Appeal No. 1385 of 2011 for the appropriate directions to the concerned Court for handing over of the passport.

2. Learned Counsel for the applicant, declares before the Court that he would abide by any condition, as may be imposed by this Court and his son Vasantbhai Naranbhai Chaudhary is also ready to file undertaking to the effect that in the event the visa is granted to the applicant by American Embassy and the applicant leaves the limit of the country for visit to U.S., he shall come back within a period of six months to India. Learned Counsel has also relied upon the order of this Court dated 23.1.2012 passed in Criminal Misc. Application No. 722 of 2012 and the order dated 2.4.2012 in Criminal Misc. Application No. 3348 of 2012.

3. We have heard Mr. KL Pandya, learned APP for the State.

4. As such, similar aspects came to be considered in order dated 2.4.2012 in Criminal Misc. Application No. 3348 of 2012 and it was ordered at paragraphs 5, 6 and 7 as under:-

5. this Court has considered the similar aspects in Criminal Misc. Application No. 722 of 2012 vide order dated 23.1.2012 and it was observed in paragraph Nos. 4 to 8 as under:

4. As such similar aspect came to be considered by this Court in a case where the passport was deposited with the Sessions Court and after the trial was over and the appeal against the order of acquittal was preferred, which was admitted by this Court, in Criminal Misc. Appeal No. 480 of 2012 in Criminal Appeal No. 66 of 2011.

this Court in the said matter observed, thus, at paragraph 5 as under:-

5. We find that the appeal is already admitted and, therefore, the movement of the applicant would remain under the control of the Court, but at the same time, since the acquittal has taken place before the trial Court, until he is convicted, free movement may be permitted, but subject to the control of the orders of this Court in the appeal. Therefore, the applicant would be entitled to get the passport released for the purpose of renewal or issuance of fresh passport, but such has to be on condition that he has to redeposit the passport, since at this stage, he has not shown any evidence that he is required to visit foreign country for any reason. At the same time in future if, pending the appeal, the applicant is required to visit foreign country by showing authenticated record, he can move appropriate application for handing over of the passport and at that stage, Court may consider the aspects, including that of imposition of appropriate conditions.

5. The same view deserves to be taken. As in the present case, the passport is with this Court, the applicant may not be required to move the learned Sessions Judge. Further, the distinguishing circumstance is that the applicant is simultaneously praying to travel abroad on account of the requirement of Visa and getting citizenship.

6. As such, on account of acquiring citizenship, for securing the the presence of the applicant, his own undertaking would not be sufficient, but his family

members have to ensure that the applicant comes back and until the appeal is concluded, his movement is under the control of the Court.

7. It is submitted by the Learned Counsel for the applicant that the family members namely; his wife as well as his son are to remain in India.

8. Therefore, it appears to us that additional condition is required to be imposed than the normal condition of filing the undertaking by the applicant, apart from depositing a particular amount by way of security.

6. It appears that same conditions deserve to be imposed even in case of applicant as was imposed by this Court in above referred matter of Criminal Misc. Application No. 722 of 2012.

7. Hence, the following order.

(a) The passport of the applicant shall be released on conditions that:

(i) The applicant deposits sum of Rs. 1 Lac with this Court;

(ii) The applicant files an undertaking to this Court that he shall come back to India within 9 months from the date of filing an undertaking.

(iii) In the said undertaking, he further states that he shall not transfer or alienate his agricultural property at Vasad, Tal. Anand bearing Revenue Survey No. 460, ad-measuring 2 Acres and 37 Gunthas directly or through Power of Attorney indirectly without prior permission of this Court or until he comes back to India and the reporting thereof is made to this Court and the declaration to that effect is made to this Court as well as to the concerned Police Station at Vasad or until the appeal is finally heard whichever is earlier.

(iv) The applicant shall also furnish the details regarding place at which he is going to stay at USA with the complete address and the telephone number. (v) The Competent Authority of the Police Department shall issue necessary Certificate for the purpose of immigration in terms of the order passed by this Court.

5. More or less, similar fact situation arose in the present matter, hence, the following order.

6. The passport of the applicant shall be released on condition that:-

1) The applicant deposits the sum of Rs. 1 Lac with the Sessions Court.

2) The applicant files the undertaking to this Court that in case if he is granted visa, for visit of U.S., he shall come back within a period of six months from the date of journey or within one year from the date of filing undertaking, whichever is earlier.

3) The son of the applicant shall also file an undertaking that in the event the visa is granted to the applicant for visit to U.S., his father-applicant shall come

back to India within a period of six months from the date of journey.

4) In the event the visa is granted and the applicant has to leave the limits of the country to visit to U.S., he shall provide complete address and the telephone number, at the place where he is going to stay.

5) After the visit is completed and applicant re-enters the limits of India, the necessary intimation shall be given to the concerned Sessions Court as well as to the concerned police station by the applicant.

The application is disposed of accordingly. Rule is made absolute. Direct service is permitted.

4. Similar situation would prevail in the present matter, save and except, as stated by the Learned Counsel for the applicant, the father of the applicant shall also file an undertaking, in addition to his own undertaking. Hence, the following order:

The passport of the applicant shall be released on the following conditions:

(1) The applicant deposits a sum of Rs. 1,00,000/-(One Lac) with the Sessions Court,

(2) The applicant files an undertaking before this Court that in case he has to leave the country, he shall come back within a period of six months from the date of the journey or within eight months from the date of the filing of the undertaking before this Court, whichever is earlier,

(3) The father of the applicant shall also file an undertaking that in the event the applicant leaves the country, he shall come back within six months from the date of his journey,

(4) After the visit is completed and applicant re-enters the limits of India, the necessary intimation shall be given to the concerned Sessions Court as well as to the concerned police station by the applicant and the passport shall be redeposited by him. On redepositing of the passport, the amount of Rs. 1,00,000/-(One Lac) deposited by the applicant be returned to him.

(5) The applicant shall also furnish complete address and the telephone numbers of the places at which he is going/to stay, while outside the country and if he is going in a [conducted tour, he shall also give the details of tour organized, organizer and other incidental details.

The application is DISPOSED OF, accordingly. Rule is made absolute. Direct service is permitted.