
(2008) 09 GUJ CK 0029

In the Gujarat High Court

Case No : Criminal Application No. 5047 of 2008 in Miscellaneous Cri.
Application No. 7013 of 1997

Krushnakant Kantilal Pancholi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 419, 467, 468

Citation : (2008) 3 GLH 278 : (2009) 1 GLR 368

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Jayshree C. Bhatt, for the Appellant; Falguni Patel, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—Rule. Ms. Falguni Patel, learned Additional Public Prosecutor waives the service of notice of Rule for the respondent-State.

2. Present petition is filed by the petitioner-original accused No. 2 for an appropriate order to release the passport of the petitioner bearing registration No. A-4217459 and permit the petitioner to go United State of America to attend her daughter, who according to the petitioner is not keeping good health.

3. In support of ill-health of the daughter, the petitioner has relied upon one communication produced at Annexure-B.

4. Ms. Jayshree Bhatt, learned Advocate appearing on behalf of the petitioner has heavily relied upon the decision of the Hon'ble Supreme Court rendered in Criminal Appeal No. 179 of 2008 in the case of Suresh Nanda Vs. C.B.I., in support of her submission that such a condition directing to surrender the passport, cannot be imposed, as the powers to impound the passport are only with the passport authority.

5. Ms. Falguni Patel, learned Additional Public Prosecutor while opposing the present petition has submitted that as such on the basis of communication at Annexure-B, the petitioner cannot be permitted to go to U.S.A. It is submitted that even from the communication at Annexure-B, it appears that the doctors are taking care. It is further submitted that even the wife of the petitioner can also go to U.S.A. to attend the daughter and it is not that the only petitioner can be helpful to his daughter in U.S.A. It is also further submitted that the decision of the Hon''ble Supreme Court in the case of Suresh Nanda 2008 Cri.LJ 1599 (SC) : 2008 (3) GLR 2333 (SC), will not be applicable to the facts of the present case, as in the said case before the Hon''ble Supreme Court, passport was seized by the C.B.I. during the course of investigation and in that connection the Hon''ble Supreme Court was considering the issue whether Investigating Officer has any power to seize passport as muddamal or not and considering the facts of the said case, the Hon''ble Supreme Court in the said decision has observed that the Investigating Officer has no authority to seize passport and the said powers are only vest with the passport authority. It is submitted that the said decision would not be applicable in a case where the accused is released on bail on certain conditions and one of the condition is that the accused shall not leave India, and therefore, the accused has to surrender passport. It is submitted that the said decision is not with respect to the powers of the Court to impose condition while granting bail. Submitting accordingly, it is requested to dismiss the present petition.

6. Heard the learned Advocate appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that the next date of hearing of the trial is 10-11-2008 and the petitioner is released on bail by the learned single Judge of this Court in connection with the complaint being C.R. No. 209 of 1997 for the offences punishable under Sections 467, 468, 419, 120B and 34 of Indian Penal Code and one of the conditions of the bail order initially was that he shall not leave Gandhingar District without permission of the trial Court except for the purpose of attending the Court and the said condition subsequently came to be deleted by the learned single Judge. However, the petitioner was directed to deposit passport before the trial Court, and accordingly, the petitioner has surrendered the passport. Now, therefore, the aforesaid condition is imposed by the learned single Judge while releasing the petitioner on bail. Learned Advocate appearing on behalf of the petitioner has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Suresh Nanda (supra). However, considering the decision of the Hon''ble Supreme Court of Suresh Nanda (supra), it appears that the controversy/issue before the Hon''ble Supreme Court in the said case was whether Investigating Officer has any power to seize passport during the investigation and there was no controversy and/or dispute before the Hon''ble Supreme Court that whether a competent Court while releasing an accused on bail, has power to impose condition to deposit passport or not. Considering the provisions of the Passport Act and Code of Criminal Procedure, the Hon''ble Supreme Court observed that the Investigating Officer has no

jurisdiction and/ or authority to seize passport, as seizing of passport would be impounding the passport and those powers are only with the Passport Authority. As stated above, the decision of the Hon''ble Supreme Court in the case of Suresh Nanda (supra) is not dealing with the powers of the Court to release an accused on one of the condition that the accused shall not leave India without prior permission and the accused shall surrender passport with the trial Court. Powers of the Court to impose condition of not to leave India and surrender passport, while releasing accused on bail, are not affected by the aforesaid decision and the same was not even the issue before the Hon''ble Supreme Court. The Hon''ble Supreme Court in Para 17 of the aforesaid decision in the case of Suresh Nanda (supra), has made it clear that the Hon''ble Supreme Court has not decided whether the passport can be impounded as a condition for grant of bail or not. The said decision would not be applicable to the facts of the present case, as in the present case, the passport is not seized by the Investigating Officer, but learned single Judge of this Court, while releasing the petitioner on bail, has directed the petitioner to surrender the passport.

8. Even on merits also, no case is made out for releasing the passport of the petitioner. No supporting medical evidence with respect to the ailment of the daughter is produced on record. Further, the wife of the petitioner can very well attend her daughter, who according to the petitioner is sick in U.S.A.

9. Under the circumstances, the petition is required to be dismissed. In the facts and circumstances of the case when the trial is of the year 1997 and next date of trial is 10-11-2008 and even when it is reported that some of the witnesses have also been examined, the ends of justice would be met if appropriate directions for early disposal of the trial are issued.

10. For the reasons stated above, the petition deserves to be dismissed and is accordingly dismissed. Rule is discharged.

11. However, the learned trial Court is directed to conclude the trial within a period of nine months from the date of receipt of writ of this order and/or on production of the certified copy of this order.