(1990) 12 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No. 16914 of 1990

Nagoor Meera APPELLANT

Vs

The Assistant Director, Enforcement Directorate, Southern Zone, Govt. of India, Shastri Bhavan, III Block, III Floor, 26, Haddows Road, Madras 600006 and Others RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Constitution of India, 1950 — Article 19(g)
Customs Act, 1962 — Section 110(3)
Evidence Act, 1872 — Section 3

Citation : (1991) LW(Cri) 487

Hon'ble Judges : Venkatasami, J;Abdul Hadi, J

Bench : Division Bench

Advocate : M.R.M. Abdul Kareem, for K.A. Basheer Ahamed and M. Abdul Nasir, for the Appellant; C.A. Sundaram, Additional Central Govt. Standing Counsel, for the Respondent

Judgement

Venkataswami, J.—The Petitioner seeks issuance of a writ of certiorarified mandamus to call for the records culminating in proceedings No. 13/316/sz/90 dated 10-10-1990, on the file of the 2nd Respondent and quash the same and consequently direct the second Respondent to return his (Petitioner''s) travel documents such as his return air ticket (Air India), identity card and driving licence issued by the Malaysian authorities and Indian Passport.

2. Before narrating the facts leading to the filing of this writ petition, we want to make the following observation:

Though wide ranging arguments travelling beyond the scope of the relief prayed for in the writ petition were addressed at the Bar, we propose to confine ourselves to the arguments that are necessary to resolve the issue ultimately raised in this writ petition. We may also point out that though the prayer in the writ petition was as set out above, Mr. Kareem, learned Senior Counsel appearing for the Petitioner, concentrated his arguments only for the return of Indian

Passport in view of the fact as stated by him that the re-entry visa issued to the Petitioner by the Malaysian authorities expires by the end of this month. We hasten to add that it does not mean that he has given up the Petitioner''s case in respect of other reliefs. In the circumstances, we do not propose to deal with all the decisions copiously cited by the learned Counsel on both sides.

3. Let us now state the facts briefly relating to this case. The Petitioner''s premises, namely, No. 10, Mirsha Hussain Street, Pudupet, Madras-21 (First Floor) (hereinafter referred to as ''the premises'') was searched by the officials of the Enforcement Directorate on 9-8-1990. The Petitioner was present at the time of the search. It is his case that he was interrogated by the Officers whether he received any amount in violation of Foreign Exchange Regulation Act (For short, hereinafter referred to as ''FERA''). The Petitioner is said to have informed the officers that he left Madras on 15-6-1990 and returned to India after a short stay in Malaysia on receipt of a telegram of the death of his father-in-law and that he has not received any amount. At the end of the search made on 9-8-1990, no incriminating document was found in the premises. A mahazar to that effect was prepared on 9-8-1990 and the same was served on the Petitioner. According to the Petitioner, the premises was again searched on 10-8-1990 when the Petitioner was away and only the Petitioner''s wife, a paralytic patient was lying bed-ridden. This second search was stoutly denied by the Respondents. The premises was again searched on 21-8-1990. This time also, the Petitioner was not present. According to the Petitioner, during the third search, his passport, his return air ticket, certain title deeds relating to his wife''s property, his passbook, his driving licence and identity card issued by the Malaysian authorities were seized, but in the mahazar, only three documents relating to title deeds alone were mentioned as seized articles and no mention was made about the other documents. It is the further case of the Petitioner that at the end of the search, the officers left a summons u/s 40 of the FERA directing the Petitioner to appear before the Enforcement of Officer, namely, the second Respondent herein, with his passport, bank accounts and details of the property on 22-8-1990. The Petitioner states that his travel documents are not at all relevant in respect of proceedings under FERA and, therefore, the seizure of documents was illegal and not warranted by the provisions of the Act.

4. On 22-8-1990, he caused a lawyer''s notice to be issued on his behalf to the 2nd Respondent requesting him to return his travel documents seized on 21-8-1990. A copy of that letter was also sent to the 1st Respondent. Another lawyer''s notice was issued on 28-8-1990 reiterating the same and informing the authorities that the Petitioner intends to leave for Kuala Lampur in two weeks time. In the meanwhile, a second summons dated 27-8-1990 was issued to the Petitioner, directing him to appear before the second Respondent along with documents mentioned in schedule, on 10-9-1990. It may be noted that the schedule was left blank without mentioning the description of any document. Finding that no reply was forthcoming from the Respondents, the Petitioner''s counsel sent another letter on 30-8-1990 enclosing a vakalath and inviting the

attention of the officers to his earlier letters. To this, a reply was sent by the second Respondent by his letter dated 31-8-1990 that inasmuch as the Petitioner was summoned u/s 40 of the Act, his vakalath cannot be accepted, and the counsel was requested to advise his client to appear in response to the summons already issued. The Petitioner appeared before the second Respondent on 10-8-1990 pursuant to the summons. It is stated in the affidavit that his advocate took him to the Enforcement Directorate on 10-8-1990 at about 11.30 A.M. and he was detained there from 11.30 A.M. on 10-8-1990 to 1.15 P.M. on 11-8-1990. During that period, namely, 25 hours and 45 minutes, he was repeatedly interrogated to admit that he had received Rs. 4 lakhs and that should give a statement like that. According to the Petitioner for getting such a statement, he was harassed, humiliated and the officers of the Enforcement Directorate used abusive language without allowing the Petitioner to have his food. A statement was recorded at about 3.00 P.M. on 10-8-1990 as per the dictation of the Enforcement Officer and another statement was recorded on the next day before he was allowed to leave the office. When he demanded the release of his travel documents, the second Respondent, it is alleged, scored out the earlier statement and prepared another statement as if the travel documents were left by the Petitioner and he was asked to collect the same on 13-9-1990. As the Respondent have neither admitted the seizure of documents mentioned in the lawyer''s notice dated 22-8-1990 nor denied the same, the Petitioner''s counsel wrote a detailed letter on 11-9-1990 to the first Respondent narrating what all happened till that date, including the Petitioner''s detention, and requested him to give appropriate direction to the concerned officer to return the travel documents immediately. The Petitioner states that he was running only a small tea-stall in Kuala Lampur and he cannot remit the huge amount as assumed by the officers. Another summons was issued directing the Petitioner to appear on 3-10-1990 which was served on him on the very same date, and since it happened to be a public holiday, he did not answer the summons. A fourth summons was issued to appear on 19-10-1990 to which the Petitioner sent a reply through his counsel on 15-10-1990. In spite of several letters by the Petitioner''s counsel, only on 10-10-1990, the second Respondent sent an evasive reply stating as follows.

The contention in your said letter as to the alleged illegal detention of your client at this office and of his documents is untrue.

5. The Petitioner did not appear on 10-10-1990, but has filed this writ petition on 25-10-1990 for the relief mentioned above. The Respondents have not proceeded with the enquiry further in view of the pendency of the writ petition.

6. Only the first Respondent has filed a counter affidavit on behalf of both the Respondents. A preliminary objection has been taken in the counter affidavit that no certiorari will lie for quashing of the summons and the writ petition in respect of that relief is liable to be dismissed in limine. As regards the relief of mandamus, the case of the Respondents was that during the search on

21-8-1990, except the documents mentioned in the mahazar, no other document as alleged in the affidavit was seized by the Enforcement Officers. In particular, the travel documents, namely, the return air ticket, identity card and driving licence are not with the Respondents. Therefore, the writ of mandamus seeking the return of those documents will not lie. So far as the Indian Passport is concerned, the Respondents have stated that the same is required by the Respondents for the purpose of investigation and, therefore, that cannot be returned at this stage. It is the case of the Respondents that the passport was surrendered by the Petitioner to the second Respondent on 11-9-1990 under cover letter of even date. The investigation cannot be proceeded with effectively due to the Petitioner''s own action in not appearing before the second Respondent and co-operating in the investigation. In fact, the Petitioner appeared on 10-9-90 and undertook to appear on 11-9-1990. Though he appeared on 11-9-1990, he submitted a letter that he was not doing well and that he would appear on 13-9-1990, and it was with this letter, he surrendered the Indian Passport to the second Respondent. As the Petitioner failed to appear on 13-9-1990, fresh summons was issued on 25-9-1990 for his appearance on 3-10-1990. On 3-10-1990. the Petitioner did not appear. Therefore, another summons was issued on 10-10-1990 for the appearance of the Petitioner on 19-10-1990. Even on 19-10-1990, the Petitioner did not appear. On the other hand, the Petitioner had filed the writ petition. The premises of the Petitioner was searched on the basis of intelligence gathered on 9-8-1990 and again on 21-8-1990, and there was no search in between as alleged by the Petitioner. Though the Petitioner was directed to appear on 22-8-1990, he failed to appear. Instead, the advocate sent a letter on 22-8-1990 making allegations that documents including passport were seized and they must be returned to the Petitioner. No reply was sent to the advocate''s letters and the vakalath was also returned on the ground that the counsel has no locus standi to represent the Petitioner at the time of investigation. It is the definite case of the Respondents that the Petitioner appeared before the second Respondent on 10-9-1990 and gave his statement in Tamil. At that time, the Petitioner produced his passport for perusal and return, which was perused and returned to the Petitioner. The Petitioner undertook to appear on the next day (11-9-1990) at 10-00 Hrs. Though the Petitioner appeared on 11-9-1990, he gave a letter to the second Respondent informing that he was not well and that he would appear on 13-9-1990. Along with that letter, he has handed over the passport for perusal. Therefore, the stand taken by the Respondents in the counter affidavit is that the passport was voluntarily given by the Petitioner for perusal, though it was once perused and returned on 10-9-1990. Regarding the other documents, the Respondents repeatedly denied that they are in possession of those documents. The Respondents have also denied that the Petitioner was detained continuously for 25 hours and 45 minutes. The Petitioner appeared on 10-9-1990 and was allowed to go home after giving statement, and he again appeared on 11-9-1990 with a requisition letter to permit him to appear on 13-9-1990. Therefore, the allegation that he was continuously detained for 25 hours and 45 minutes was not correct, according to the Respondents.

7. The Petitioner has filed a reply affidavit denying the averments in the counter affidavit which are contrary to the statements made in the affidavit, and reiterating the averments already made in the affidavit.

8. On the basis of the above affidavit, counter affidavit and reply affidavit, arguments were addressed. We make it clear that the concentration of the learned Counsel for the Petitioner was only with reference to return of passport. By not expressly giving up the relief of certiorari and return of other documents, we presume that he reserves his right to press for the same in some other proceedings. Therefore, we are confining ourselves with regard to the return of passport alone.

9. In the light of the above pleadings, let us now set out the rival contentions concerning the relief of return of passport, admittedly in the possession of the second Respondent.

10. Mr. M.R.M. Abdul Kareem, learned Senior Counsel appearing for the Petitioner advanced an extreme argument that passport is not a ''document'', either for the purpose of investigation or for the purpose of proceedings under FERA. He supported the above said contention by stating that there is a separate enactment which is a self-contained Code, namely, the Passports Act, 1967 and the Rules framed thereunder to ideal with any matter concerning ''passport''. If the passport is to be treated as a ''document'' for the purpose of FERA, having regard to the possibility of that document being retained for an indefinite period and sometimes beyond the expiry of the validity of the passport, it will offend the fundamental right guaranteed under Article 19(g) of the Constitution of India. According to the learned Counsel, the retention of a passport under FERA would amount to impounding the passport and when (Sic)e passport Act prescribes certain procedures and conditions for impounding, the authorities under FERA cannot retain the passport without having due regard to those procedures and conditions. According to him, passport cannot be retained for extraneous purposes, and in this case, the passport has been retained by the Respondents to prevent the Petitioner from going abroad which is an extraneous purpose not connected with the investigation under FERA. May be the Respondents have some other power, for the purpose of investigation and proceedings under FERA, to prevent the Petitioner from going abroad, but not by retaining the passport. In support of this, he also cited a judgment of David Annoussamy, J. in Thanapal v. Assistant Collector of Central Exise, Madras 1986 LW (Crl) 114 : (1987) 13 E.C.C. 305 . He also cited a judgment of the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . He next contended that assuming that passport is a ''document'' for the purpose of FERA, the seizure of passport without strictly following the requirement of Section 37 of the Act is bad. The fact that the passport was seized along with other documents at the time of search of the premises on 21-8-1990 without including those documents in the mahazar has been established by the Petitioner by issuing notice through lawyer on the

next day of the search and by non-denial of the statement made in the lawyer''s notice by the Respondents. In those circumstances, the Respondents have no authority to retain the passport. In support of that, he placed reliance on an unreported judgment of this Court by one of us (Venkataswami, J.) in Writ Petition No. 5508 of 1988 K. Kalimuthu v. The Assistant Director, Enforcement Directorate, Madras-6 and Anr. - order dated 4-7-1986. He also contended that even according to the Respondents, the passport was perused and returned to the Petitioner on 10-9-1990 and the further case in the counter affidavit is that the passport was handed over by the Petitioner for perusal only. Even according to the Respondents, no case has been made out that the passport is required for the purpose of investigation or for further proceeding under the Act. Therefore, the retention of the passports is obviously for achieving an extraneous or collateral purpose.

11. Contending contra, Mr. C.A. Sundaram, learned Additional Central Government Standing Counsel, submitted that ''document'' is not defined under the definition clause, but an inclusive definition is given by way of Explanation to Section 33(2) of the Act. That inclusive definition is wide enough to include ''passport''. He also invited our attention to Section 3(18) of the Central General Clauses Act, Section 3 of the Evidence Act and also Section 29 of the Indian Penal Code defining ''document''. He also placed reliance on a judgment of this Court in H. Jamaluddin v. The Deputy Director, Enforcement Directorate, Madras-6 (Writ Petition No. 81009 of 1990 dated 14-8-1990) wherein Bakthavatsalam, J. has held that ''document'' will include ''passport'' in view of Explanation to Section 33(2) of the Act. He also brought to our notice two judgments of other High Courts, one of Kerala High Court and the other of Gujarat High Court, namely, Devadasan Dayalal v. Collector of Customs and Central Excise 1986 9 ECC 355 and Abdul Kader Mohamed Jhaveri v. Union of India 1987 14 E.C.C. 81 wherein the courts have taken the view that ''passport'' is a ''document'' for the purpose of FERA.

12. On merits, he submitted that passport was not seized along with other documents as alleged by the Petitioner in his affidavit during the search on 21-8-1990 whatever documents seized, were mention in the mahazar according to the learned Counsel it is the Petitioner who produced the passport for perusal on 10-9-1990 and it was returned alter perusal, again, It was the covering letter for perusal. Therefore, it must be taken that the passport was produced pursuant to the summons issued u/s 40 of the Act. Assuming that the Court is not prepared to accept the case of the Revenue that the passport was produced pursuant to the summons issued u/s 40 of the Act, even then, the retention can be sustained u/s 38 of the Act, and therefore, the Respondents are entitled to retain the same to find out whether it is required for investigation or not. That stage has not come, and because of the attitude of the Petitioner in not appearing before the second Respondent, the enquiry could not be proceeded with. If he had appeared before the second Respondent for enquiry, by this time a decision would have been taken whether the passport is required for

investigation or not. According to the learned Counsel, the writ petition is premature and is liable to be dismissed on that ground. He also submitted that this Court may not go into the question of fact and throttle the investigation at the preliminary stage. In support of this, he placed reliance on a judgment of the Supreme Court in State of Bihar and Another Vs. J.A.C. Saldanha and Others, and a Division Bench judgment of this Court in Mohideen Abdul Kadar and Ors. v. The Collector of Central Excise, Coimbatore (Writ Appeal No. 1454 of 1987, etc. Batch - judgment dated 28-9-1989). On this basis, he contended that the writ petition is liable to be dismissed.

13. On the light of the facts and contentions set out above, we feel, the following two questions arise for our decision:

(1) Whether ''passport'' is a ''Document'' for the purpose of investigation and proceedings under the FERA?: and

(2) If the answer is in the affirmative for the above question, whether the retention of the passport by the second Respondent in the facts and circumstances of this case is justified?

14. Even at the outset, we would like to express that in view of serious allegations made in the letters sent by lawyer on behalf of the Petitioner stating that travel documents including passport, identity card issued by the Malaysian authorities, etc. though seized when the premises was searched on 21-8-1990 without mentioning the same in the mahazar report and without giving any separate receipt, the Officers of the Enforcement Department including the second Respondent had taken them away and as the same allegations have been reiterated in the affidavit, the second Respondent who was present at the time of search on 21-8-1990 should have filed a counter affidavit answering the allegations. Instead, the 1st Respondent who had no first-hand information about those allegations has filed the counter affidavit on behalf of both the Respondents. In fact, a comment was made by the learned Counsel for the Petitioner on this aspect.

15. On the question whether ''passport'' is a ''document'' the decision rendered by one of us (Venkataswami, J.) in Writ Petition No. 5808 of 1986 on which reliance was placed by the learned Counsel for the Petitioner will not be of any avail as this general question was neither raised nor answered in that case. Only on the facts of that case, that decision was rendered. No doubt, David Annoussamy, J., in (1987) 13 ECC 300 (supra), has held that

Section 110(3) of the Customs Act cannot include a passport which forms part of a person as a traveller. It shows the identity of the person, describes the permission given by the country to travel, the permission given by the host country to stay therein. He should keep it with him as long as he is in the foreign country. It cannot be assimilated to other documents or things which would be useful or relevant to any proceedings under the Act.

However, Bakthavatsalam, J. in (1990) 26 ECC 145 (supra), has held that

In view of the definition of ''document'' given and which is inclusive to, it can very well include passport also under the Foreign Exchange Act, 1973. Hence the contention raised by the learned Counsel for the Petitioner fails.

A learned single judge of the Kerala High Court in (1985) 9 E.C.C. 345 (supra), has taken the view that "there cannot be any doubt that a passport answers description of a "document", occurring in Section 110(3) of the Customs Act". In coming to this conclusion, the learned Judge of the Kerala High Court (R. Sukumaran, J.) has referred to a decision in Hill v. Racem (1945) 1 KB 329 , Hayes v. Brown 1920) 1 KB 250 and a Full Bench judgment of the Kerala High Court in Francis Manjooran v. Government of India 1965 KLT 1076 . A Division Bench of the Gujarat High Court in (1987) 14 E.C.C. 81 (supra) has held that

any writing which was perceptible to the eyes, was both a document and a thing. Consequently, the passport was both a document and a thing as contemplated by Section 38 of FERA.

The learned Judges have elaborately dealt with the matter and sustained the seizure and retention of passport on the facts in that case. The definition of the word "document" in Section 3(18) of the General Clauses Act, Section 3 of the evidence Act and Section 29 of the Indian Penal Code will show that the ''document'' must be construed in a wide manner. The definition as given in the General Clauses Act. Evidence Act and the Indian penal Code reads as follows:

Section 3(18) of the General Clauses Act: "document" shall include any matter written, expressed or described upon any substance by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter.

Section 3 of the Evidence Act: "Document" means any matter expressed or described upon any "substance by means of letters, figures, or marks, or by more than one of those means, intend to be used, or which may be used, for the purpose of recording that matter.

Illustration A writing is a document; words printed, lithographed or photographed are documents; A map or plan is a document; An inscription on a metal plate or stone is a document A caricature is a document.

Section 29 of the Indian Penal Code: The words "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter

16. Apart from the above decided cases, a perusal of the definition of "Document" extracted above will show that "Document" must be construed in a wide manner.

17. Explanation to Section 33(2) of FERA reads follows:

For the purposes of this Section 34 and Sections 36 to 41 (both inclusive),"document" includes Indian currency, foreign ex-change and books of account.

In view of the above definition and in the light of decisions of Gujarat High Court and Kerala High Court, and Bakthavatsalam, J. of this Court, we hold that "Document" would include "passport" for the purpose of investigation and proceedings under FERA. With respect, we are unable to agree with the view taken by David Annoussamy, J.

18. The next question is, whether the retention of the passport in this case is justified. We are not satisfied with the explanation given in the affidavit for not answering to the several letters of the counsel for the Petitioner alleging that the passport has been taken away by the officials at the time of search of the premises on 21-8-1990. Even otherwise, no satisfactory explanation is forthcoming from the Respondents why the passport was returned after perusal on 10-9-1990. Even now, in the counter affidavit, what is stated is, that the Petitioner handed over the passport for perusal and return. The relevant portion of the counter affidavit reads as follows:

At the time of giving the statement the Petitioner produced his passport for perusal which was perused and returned to him and this "fact is corroborated by the Petitioner''s statement. The Petitioner also undertook to appear on the next day at 10-00 hours. However, on 11-9-1990 the Petitioner appeared before the second Respondent and submitted a letter slating that he was not well and he would appear on 13-9-1990 at 10-00 hours. Along with the said letter the Petitioner also furnished his Indian Passport for perusal.

Repeatedly, the learned Counsel for the Petitioner pointed out that there is nothing in the passport which could be helpful to establish violation of any of the provisions of FERA. In spite of that, no attempt was made by the Respondents even before us to establish any nexus between the passport and the investigation under FERA. It is a matter of common knowledge what all entries would be therein a passport. If all these factors are taken into account, we cannot escape the conclusion that the retention of the passport is to prevent the Petitioner from going abroad by using the same, particularly, when in the second lawyer''s letter, he has specifically stated that the Petitioner would like to leave for Malaysia within two weeks from that date. If that is the reason behind the retention of the passport. certainly that cannot be sustained under FERA. It is not as if the Respondents have no other remedy to compel the presence of the Petitioner for enquiry in connection with the investigation or lawfully to prevent the Petitioner from going abroad without completing the enquiry. What we want to point out is that the passport cannot be retained to achieve a collateral purpose under FERA, particularly, when the Respondents have not made out any case that the passport is required for investigation. If really the passport was required for investigation, they would not have returned after perusing the passport on one occasion, and received it again for mere perusal as stated in the counter affidavit. In this connection, learned Counsel for the Petitioner brought to our notice a judgment of the Delhi High Court in K.T. Advani Vs. The State, . In that case, H.L. Anand, J. has observed as follows:

That leaves for consideration the question if Grover could be required to produce his passport. Passport is no doubt not the property of the passport holder. It continues to be the property of the Central Government and that is what Section 17 of the Passport Act, 1967 says. The "procedure for its seizure, production, as indeed impounding, etc. is laid down in that Act. Officers exercising power under the Foreign Exchange Regulation Act do not have any power under that Act. They are no doubt entitled to seize that passport if such a seizure would be otherwise justified or to take it into possession when a suspect is arrested, on his personal search. The officers are also entitled to require the suspect to produce any document but such documents must have relevance to the matter under investigation. If any entry in the passport or the passport itself is relevant for the purpose of investigation or proceedings under the Act, the officers conducting the investigation or the proceedings would certainly be entitled to require the suspect to produce the passport. But the mere anxiety of the authorities that the suspect should not be able to leave the country would not entitle them to require the suspect to produce the passport u/s 40 of the Act even though the appropriate authorities under the Passport Act, as indeed, the Court which grant bail the suspect would be entitled to make appropriate orders in relation to it in accordance with law.

19. At the risk of repetition, we want to point out once again the various circumstances, the cumulative effect of which made us to order return of the passport. The circumstances are, that immediately on the next day of the search of the premises on 21-8-1990, the Petitioner''s lawyer has called upon the second Respondent to return inter alia the passport, which, according to him. was taken away from the Petitioner''s premises without giving any acknowledgment. This statement was repealed in several of his letters. But the Respondents, for reasons given in the affidavit, have not chosen to reply those letters except giving an evasive reply (relevant portion extracted above) on 10-10-1990. We have already stated that we are not convinced with the reply. The summons issued on 21-8-1990 directed the Petitioner to produce the passport along with other documents mentioned in the scheduled to the summons whereas the fresh summons issued for the second time, though the body commands the Petitioner to produce documents mentioned in the schedule, does not contain the details in the schedule. The schedule is left blank. The Petitioner is alleged to have voluntarily brought the passport and handed over the same for perusal on 10-9-1990 and the second Respondent, after perusal has returned the same to the Petitioner. Again without any summons, but on the basis of the undertaking given on 10-9-1990, the Petitioner is said to have appeared on 11-9-1990 and handed over the passport to perusal with a covering letter. Be it noted that the allegation of the Petitioner is that he was detained continuously for a period of 25 hours and 45 minutes, i.e., from 11.30 A.M. on

10-9-1990 to 1.15 P.M. on 11-9-1990. If really the passport was required for investigation, certainly the second Respondent would not have parted with the same on 10-9-1990 after perusal which means application of mind by the second Respondent, but would have seized either exercising powers u/s 38 or Section 40 of the FERA. Even though the matter is still under investigation, nothing prevented the Respondents to prima facie satisfy us that there is connection between the entries in the passport and the investigation for alleged violation of the FERA. That has not been done. We also feel that the passport being an Indian passport, the entries of the same can be xeroxed and the Petitioner can be asked to attest the same, and if necessary, an undertaking can also be taken from the Petitioner to produce the same whenever called upon to do so for enquiry. Taking all these factors into consideration, we come to the conclusion that the retention of the passport was to see that the Petitioner is prevented from going abroad. That, in our view, cannot be achieved under the pretext that the passport is required for the purpose of investigation under FERA.

20. For the reasons slated above, we are of the view that the Respondents are not justified in retaining the passport and, therefore, we direct the Respondents to return the same to the Petitioner within one week from this date. The writ petition is ordered accordingly. No costs.

