

MANU/DE/0360/2017

Equivalent Citation: 2017IIIAD(Delhi)163, 2017(2)JCC836

IN THE HIGH COURT OF DELHI

Bail Applns. 1645/2015 and 205/2016

Decided On: 07.02.2017

Appellants: **Gurinder Mohan Singh Sambhi and Ors.**
Vs.

Respondent: **The State (NCT of Delhi)**

Hon'ble Judges/Coram:

Mukta Gupta, J.

Counsel:

For Appellant/Petitioner/Plaintiff: D. Hasija and Sandhani B. Saikia, Adv.

For Respondents/Defendant: Amit Ahlawat, APP and Usha Sharma, Insp.

JUDGMENT

Mukta Gupta, J.

CrI.M.A. 1590/2017 in BAIL APPLN. 1645/2015

CrI.M.A. 1589/2017 in BAIL APPLN. 205/2016

1. By these two applications, the applicant Ajit Singh Sambhi seeks return of his passport which he was directed to deposit with the investigating officer on the statement of learned counsel for the complainant before this Court when bail application of his parents and brother i.e. Bail Appln. No. 1645/2015 came up for hearing on the application of complainant seeking impleadment and withdrawal of interim protection on 22nd April, 2016. The order dated 22nd April, 2016 passed by this Court in Bail Appln. No. 1645/2015 reads as under:-

"CrI.M.A. No. 19024/2015 (by the complainant for impleadment)

Vide this application, the complainant seeks her impleadment in the bail application. Keeping in view the nature of the offence, the application is allowed. The complainant be impleaded as respondent No. 2 in the application. Amended memo of parties be filed within ten days.

Application stands disposed of.

CrI.M.A. No. 19022/2015 (by the complainant for withdrawal of interim protection)

Vide this application, the complainant seeks withdrawal of the interim protection granted to all the petitioners including the husband.

It is submitted by the counsel for the complainant that despite directions given to the husband of the complainant, he has not deposited the passport. Counsel for the petitioner undertakes to deposit the passport on or before 12 noon of

23rd April, 2016.

It is made clear that in case the husband of the complainant fails to abide by this direction, interim protection granted to him will automatically stand cancelled.

Reply to this application has not been filed by the petitioner so far. One final opportunity is granted to file the same within two weeks with advance copy to the State as well as counsel for the complainant.

Renotify on 20th July, 2016.

Interim orders to continue so far as the petitioners are concerned. However, interim order qua the husband of the complainant is subject to return of the passport."

2. Facts leading to passing of the order dated 22nd April, 2016 by this Court are that two FIRs were got registered by the complainant against the applicant Ajit Singh Sambhi and his family members being FIR Nos. 15/2015 under Sections 313/34 IPC registered at PS Sunlight Colony and 799/2015 under Sections 498A/406/506/34 IPC registered at PS Hari Nagar.

3. In FIR No. 799/2015 under Sections 498A/406/506/34 IPC registered at PS Har Nagar, anticipatory bail applications were filed by the family members of the applicant i.e. Gurinder Mohan Singh Sambhi, Ramanjeet Sambhi, parents of the applicant and Gurmukh Singh Sambhi, brother of the applicant before the learned Additional Sessions Judge which were dismissed vide order dated 6th August, 2015. Hence the three of them filed bail application before this Court being Bail Appln. No. 1645/2015 which came up for hearing before this Court on 14th August, 2015 wherein this Court passed the following order:-

"BAIL APPLN. 1645/2015

The petitioners before this Court are father-in-law, mother-in-law and brother-in-law of the complainant. The complainant had been married to the son of petitioner nos.1 and 2. Parties had been married on 04.12.2013. Contention in the complaint besides harassment qua the petitioners and her husband for dowry demand was that she was forced into an abortion for which she had filed a complaint pursuant to which FIR under Sections 313/34 of the IPC. Learned senior counsel for petitioners states that the petitioners have been granted bail in that matter. The present FIR has been registered under Sections 498A/406/506/34 of the IPC. It is stated that complainant is living separately from her husband since 19.12.2014. This Court has been informed that her husband (Dr.Ajit Singh Sambhi) is a British citizen and is living in London and has taken up a job in London. He is a dentist by profession. It is further submitted that the husband is ready to join investigation and the parties can work out an amicable settlement. He is under coercive pressure and he is apprehending arrest that he has not come to India.

Dr.Ajit Singh Sambhi will be present in Court on the next date; he will appear before the Delhi High Court Mediation and Conciliation Centre for mediation proceedings on 25.8.2015 and thereafter on all subsequent dates as and when summoned by the Mediator. The petitioners shall also join investigation and the mediation proceedings.

Needless to state that the complainant shall also join the mediation proceedings on the aforesaid date and thereafter on all subsequent dates as and when summoned by the Mediator.

Till the next date no arrest.

Dr.Ajit Singh Sambhi shall also not be arrested. He shall appear before the Investigating Officer if so required.

Investigating Officer shall inform the concerned authorities as the learned senior counsel for the petitioners states that a LOC has been issued against Dr.Ajit Singh Sambhi."

4. In FIR No. 15/2015 under Sections 313/34 IPC an application was filed by Gurinder Mohan Singh, father of the applicant seeking directions to the investigating officer to file status report depicting stage of investigation. One more application was filed with the prayer that proceedings under Section 82 Cr.P.C. against the applicant Ajit Singh Sambhi be stayed. On these two applications on 24th August, 2015 learned Metropolitan Magistrate passed the following order:-

"An application filed on behalf of the applicant -Dr. Gurinder Mohan Singh Sambhi for seeking directions to the IO and call for status report/ATR.

Reply filed.

The present application is filed with the prayer for directing the IO to file his status report depicting the stage of investigation. Another application has also been filed with a prayer that proceedings U/s 82 Cr.P.C. be stayed against applicant-Ajit Singh. However, orally the Ld. Counsel for applicant-Dr.G.M.S. Sambhi and Sh.A.S. Sambhi has also prayed that in the present case, the IO has to file a report against son of applicant-Sh. A.S. Sambhi for execution of process U/S 82 Cr.P.C. on 30.09.2015 and that LOC of the accused in the present case has been issued and has prayed relief on two counts:-

- 1.** Process U/s 82 Cr.P.C. be stayed against accused-A.S. Sambhi.
- 2.** LOC against the accused be cancelled.

It is stated that LOC has been issued on intimation of the IO to the concerned authority and the grounds prayed for the relief are as follows:-

- 1.** The accused has not received any notice to join the investigation as he has residing abroad and no steps have been taken with the M.E.A. to serve the notice abroad in London where the accused is residing. Even the IO has not countered this submission of the applicant and the father of the complainant has also not submitted on this point.
- 2.** The Hon'ble High Court has granted relief to the applicant that he shall not be arrested and the IO will inform the concerned authority as LOC has been issued against the applicant and the applicant needs to join the mediation proceedings which are slated for hearing in Hon'ble High Court on 25.08.2015 and said order made in another FIR case lodged U/s 498A, 406, 506/34 PS: Hari Nagar lodged at the instance of the complainant will be frustrated if the applicant is not allowed to depart by the immigration at the Airport.

I agree with the submission of the Ld. Counsel if the same is verified on the record and I stayed the proceedings U/s 82 Cr.P.C. against the applicant and LOC against the applicant is cancelled, subject to the following conditions:-

1. The process U/s 82 Cr.P.C. is stayed for a period of two weeks and the LOC is cancelled so that the applicant may join the mediation proceedings. Process U/s 82 Cr.P.C. is stayed till 07.09.2015.

2. The IO is at liberty to impound the passport of the applicant in the interest of justice and smooth investigation.

Separate copy of the order be provided to the IO for the record and also to the applicant if so prayed."

5. The order dated 24th August, 2015 was followed by order dated 14th September, 2015 passed by the learned Metropolitan Magistrate in FIR No. 15/2015 as under:-

"None for accused despite several calls even till 1.15 pm.

Case was listed as a miscellaneous matter which are taken up at 12.30 pm and previous hearing i.e. on 24.08.2015, 07.09.2015, 10.09.2015, 11.09.2015 were also done at 12.30 pm. Vide order dated 24.08.2015 process u/s 82 Cr.P.C. against applicant Ajit Sambhi was stayed on two conditions firstly that the applicant will join the mediation proceedings and that IO may impound the passport. Today report was called from the IO whether the passport has been impounded. It is pertinent to note that LOC has been opened against the accused which was cancelled vide order dated 24.08.2015 and at the same time liberty was granted to the IO to impound the passport. Now SI Sudhir Sharma on behalf of IO SI Sanjay Kumar has filed the report that the accused is avoiding deposit of passport with the Investigating Agency despite giving of notice u/s 91 Cr.P.C. and opportunity is given to him on 03.09.2015, 05.09.2015 and 07.09.2015 as well as on 09.09.2015. As the accused is not cooperating with the Investigating Agency, the order dated 24.08.2015 is automatically set aside which was conditional on the deposit of passport. The Investigating Agency may proceed against the accused u/s 82 Cr.P.C. and the status of LOC of the accused which was opened may again be reopened and separate copy of the order be given to the SHO for his intimation and compliance. Date of execution of process u/s 82 Cr.P.C. is 30.09.2015."

6. As noted above, though the applicant had not filed any anticipatory bail application in FIR No. 799/2015 under Sections 498A/406/506/34 IPC but so that parties could negotiate a settlement and appear in mediation proceedings, the applicant was granted interim protection by this Court in Bail Appln. No. 1645/2015. The applicant herein filed an anticipatory bail application before the learned Additional Sessions Judge in case FIR No. 15/2015 under Sections 313/34 IPC which also came up for hearing on 24th August, 2015 wherein on the opposition of the complainant and time sought to file the reply, the application was adjourned to 25th August, 2015 without passing any interim order in favour of the applicant. Vide order dated 25th August, 2015, learned Additional Sessions Judge granted interim protection noting as under:-

"Investigating agency has fairly conceded that they have no objection, in case interim protection is granted to the applicant to enable him to participate in mediation proceedings.

As informed by the father of the complainant, the mediation proceedings are to be commenced from today itself at 3.30 PM before the Mediation Cell, High Court of Delhi.

Keeping in view the aforesaid submissions, it is hereby directed that no coercive action be taken against the applicant till next date of hearing.

Put up for arguments and disposal of present bail application on 28.9.2015.

Copy of the order be given "dasti" by bail section."

7. On 28th September, 2015, in view of the order of the Metropolitan Magistrate giving discretion to the investigating officer that if need so arises, he may impound the passport, the investigating officer in his reply submitted that despite directions of the Court of learned Metropolitan Magistrate, the petitioner/applicant was not surrendering the passport on which the learned Additional Sessions Judge passed the following order:-

"In his reply, IO has submitted that despite directions of the court of Ld. MM, the applicant is not surrendering his passport. Copy of the order dt. 24.8.2015 perused whereby the Ld. MM was pleased to grant liberty to the IO to impound the passport of the applicant, if any need to do so arises.

IO has failed to justify any reasons for impounding the passport of the applicant who is stated to be working in United Kingdoms.

First round for mediation is stated to have been over and now the matter is further listed for negotiation between the parties on the quantum of alimony.

Hence, put up for further proceedings on 3.11.2015.

Interim order to continue till next date of hearing.

Copy of the order be given dasti by bail section."

8. The two applications were disposed off by the learned Metropolitan Magistrate vide order dated 30th September, 2015 noting that since the proceedings under Section 82 Cr.P.C. were pending and an interim protection by superior court was granted, thus the applicant should approach for the reliefs before the superior court. The order dated 30th September, 2015 reads as under:-

"Two applications are pending disposal, one application is for the status report and the other application is for passing appropriate order in view of the reply of the IO and the submission of the counsel that the applicant is regularly joining the investigation. As far as the application for passing appropriate order is concerned the same was filed by the counsel after order dated 14.09.2015 of this court whereby the investigating agency was given the liberty to proceed u/s 82 Cr.P.C. and also liberty was given to reopen the LOC after the same was directed to be closed on 24.8.15. Basically in the said application the Ld. Counsel has prayed that process u/s 82 Cr.P.C. which was stayed on 24.08.2015 be finally dropped and adverse process against the accused be cancelled as he is regularly joining the investigation.

As far as the application for passing appropriate order is concerned report was called from the IO regarding the issuance of notice to the accused/applicant for

joining investigation after 09.09.2015 and his response thereto as the order on dropping of proceedings u/s 82 Cr.P.C. hinges on the cooperation of accused in joining the investigation. The Ld. Counsel also submits that the IO may be directed not to impound the passport of the applicant. Ld. Counsel has also shown copy of order dated 28.09.2015 of Ld. ASJ Sh. Lokesh Kumar Sharma, wherein interim directions have been given that no coercive action be taken against the applicant till 03.11.2015. Also it has been observed that the IO has failed to justify any reason for impounding the passport of the applicant who is stated to be working at United Kingdom. As this court has already passed the order dated 14.09.2015 wherein IO has been given liberty to proceed u/s 82 Cr.P.C and reopen the LOC against the applicant and on the other hand it is apparent that a superior court has given interim protection to the applicant and made observation relating to the passport, propriety demands that for the final relief regarding process u/s 82 Cr.P.C. and retention of passport, the applicant may approach for the same in appropriate legal proceedings in the superior court.

Now as far as application for the status report is concerned, it is alleged by the counsel that the IO is not conducting investigating fairly and is not giving proper status of the cooperation of the applicant in joining the investigation. The IO has remained silent on the notice given to the accused for 05.09.2015 for joining the investigation and also no notice u/s 91 Cr.P.C. has been shown by the IO which he states to have been given to the applicant for impounding the passport. When this court asked the reasons for the same to the IO, he had no response. It seems that the IO is not working diligently on the case and in future he is expected to give complete answers to the query posed. The counsel for the applicant also states that if he finds that the IO is not conducting investigation fairly, he would move appropriate monitoring application regarding the investigation conducted by the IO. The counsel is given liberty for the same. With these observation the two applications are disposed of. Copy may be given dasti to the counsel, if so prayed, as per rules."

9. Vide order dated 3rd November, 2015, learned Additional Sessions Judge granted anticipatory bail to the petitioner in case FIR No. 15/2015 under Sections 313/34 IPC and did not impose any condition that the applicant should deposit the passport. The conditions imposed were inter alia that he would not leave the territory of India without prior information to the investigating officer of the case as well as Ld. MM/ACMM/CMM concerned. The order dated 3rd November, 2015 reads as under:-

"Today again, it has been submitted that no negotiation could take place between the parties as exorbitant demand is being raised from the side of the complainant. FIR in this case has been registered on 6.1.2015 and more than 10 months have elapsed since then.

IO when questioned about the pace of investigation, had stated that he was informed by the doctor concerned that it was owing to some medical complication that the complainant was aborted. It has been stated further by the IO that as per the complainant's version, she was administered something by the family of the applicant due to which she had developed medical complications. However, no investigation has been conducted so far in order to ascertain this fact.

It is also note worthy to mention here that same doctor who was attending the

complainant from the day one had caused her abortion and the said doctor had already made a statement in that regard to the IO.

From the aforesaid facts of the case, I am of the considered opinion that custodial interrogation of the applicant is not required in the given set of facts and circumstances of the case. Hence, it is hereby directed that in the event of his arrest, applicant/accused be admitted on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of IO/Arresting Officer.

Applicant/accused shall however join the investigation as and when required by the IO and he shall not make any attempt either directly or indirectly to intimidate the complainant or hamper the investigation. He is also directed to not to leave the territory of India without prior information to the IO of the case as well as Ld. MM/ACMM/CMM concerned.

With these observations, the application, as filed, stands disposed of.

Copy of the order be given "dasti" by bail section."

10. It is evident from the above orders that in case FIR No. 15/2015 under Sections 313/34 IPC which was the subject matter of applications seeking progress in investigation and quashing of proceedings under Section 82 Cr.P.C., there was no direction of the learned Metropolitan Magistrate directing deposit of passport to the investigation officer except that discretion was given to the investigation officer to impound the passport if the need so arises. Learned Metropolitan Magistrate did not apply its judicial mind to the fact whether the investigating officer had the authority to impound the passport or a case was made out for recommendation of impounding the passport to the competent authority by the investigating officer or the court concerned.

11. As noted above, the applicant was granted interim protection by this Court in Bail Appln. No. 1645/2015. No further substantive order was passed in this bail petition and the interim order of protection was continued till 14th January, 2016 when the complainant filed two applications for impleadment and withdrawal of the interim protection. An application was also filed by the applicant seeking permission to travel to United Kingdom which was withdrawn on 22nd March, 2016.

12. The interim protection granted to the applicant in case FIR No. 799/2015 under Sections 498A/406/506/34 IPC continued by this Court in Bail Appln. No. 205/2016. However, on 26th August, 2016 since none appeared on behalf of the applicant, the interim order in his favour was vacated. Pursuant thereto, the applicant was arrested and was granted regular bail by the learned Trial Court vide order dated 29th August, 2016, the relevant portion whereof is reproduced in para 15 hereinafter.

13. It is in these applications that on 22nd April, 2016, learned counsel for the complainant stated that despite directions given to the husband of the complainant, he has not deposited his passport. Thus, this Court passed order dated 22nd April, 2016 as noted above directing him to deposit the passport on or before 12 noon of 23rd April, 2016. A perusal of the order sheets as noted above clearly shows that no Court had directed the applicant Ajit Singh Sambhi to deposit his passport. Only discretion was granted to the investigating officer to impound the passport which it had no jurisdiction to do. It is not disputed that till date the investigating officer has sent no recommendation to the competent authority for impounding of the passport of Ajit Singh Sambhi. Thus the observation of this Court on 22nd April, 2016 that despite

directions the petitioner/applicant has failed to deposit the passport was on the statement of the learned counsel for the complainant and directions were issued to the applicant to deposit the passport. This Court in the present proceedings is refraining from making any observation that the statement of learned counsel for the complainant was in overreach of the proceedings of the Court however suffice it is to state that till date there is no order of any competent court directing the petitioner to deposit the passport and in the order granting bail in FIR No. 799/2015 the condition imposed is that the applicant will seek permission from the Court before leaving the country and in FIR No. 15/2015 that the applicant will inform the investigating officer of the case as well as the Trial Court/CMM/ACMM. Thus, the order dated 22nd April, 2016 passed by this Court directing deposit of the passport was on erroneous statement made by learned counsel for the complainant.

14. The Supreme Court in the decision reported as MANU/SC/7020/2008 : (2008) 3 SCC 674 Suresh Nanda Vs. Central Bureau of Investigation noting the distinction between "seizure" and "impounding" held that even the Court cannot impound the passport. It was held-

"14. In our opinion, while the police may have the power to seize a passport under Section 102(1) CrPC, it does not have the power to impound the same. Impounding of a passport can only be done by the Passport Authority under Section 10(3) of the Passports Act, 1967.

15. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In Law Lexicon by P. Ramanatha Aiyar (2nd Edn.), the word "impound" has been defined to mean,

"to take possession of a document or the like for being held in custody in accordance with law".

Thus, the word "impounding" really means retention of possession of goods or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 CrPC if it is permissible within the authority given under Section 102 CrPC, it does not have power to retain or impound the same, because that can only be done by the Passport Authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 CrPC), thereafter the police must send it along with a letter to the Passport Authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the Passport Authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the Passport Authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide State of Orissa v. Binapani Dei [MANU/SC/0332/1967 : AIR 1967 SC 1269]).

17. In the present case, neither the Passport Authority passed any order of

impounding nor was any opportunity of hearing given to the appellant by the Passport Authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October 2006. In our opinion, this was clearly illegal. Under Section 10-A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport Authority under Section 10(3).

18. In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 CrPC states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while CrPC is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edn., p. 133). This principle is expressed in the maxim *generalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the court under Section 104 CrPC though it can impound any other document or thing."

15. In view of the discussion aforesaid, the investigating officer is directed to release the passport of the applicant. Needless to state that as directed by the learned Metropolitan Magistrate vide order dated 29th August, 2016 while granting bail in case FIR No. 799/2015 under Sections 498A/406/506/34 IPC registered at PS Hari Nagar the petitioner has to comply with the following directions-

"Considering the entire facts and circumstances in totality, the bail application is allowed. Accused Ajit Singh is admitted to bail on furnishing a bail bond in the sum of Rs. 50,000/- with one surety in the like amount with the following conditions:

- 1) He shall be depositing an FDR of Rs. 3 lacs in the name of the court. The same shall not be released to the complainant till disposal of the case.
- 2) he shall not leave the country without the permission of the court.
- 3) In case, the applicant/accused shifts his residential address, he shall intimate the same to the IO with immediate effect."

16. The applicant will also comply with the directions passed by the learned Additional Sessions Judge vide order dated 3rd November, 2015 while granting anticipatory bail to the applicant in FIR No. 15/2015 under Sections 313/34 IPC registered at PS Sunlight Colony.

17. Applications are disposed of accordingly.

© Manupatra Information Solutions Pvt. Ltd.