

MHCC020000892003

**IN THE COURT OF SESSION FOR GREATER BOMBAY AT MUMBAI****ORDER BELOW EXH.301  
IN  
CBI SPL. CASE NO. 83/2003**

Pallav Kishore Ved

..Applicant/accused no.11

V/s.

C.B.I.

(R.C. 4(E)/2002/CBI/BS&amp;FC, Mumbai) ..Respondent.

**CORAM: S.P.NAIK-NIMBALKAR  
SPECIAL JUDGE (CBI)  
(C.R. NO.51).****DATED: 08.06.2022.**

Ld. Adv. Mr. Modi for applicant/ accused no.11.

Ld. PP Mr. Wankhede for CBI.

**ORAL ORDER**

1. Application in hand has been filed by accused no.11 Pallav Kishore Ved for return of passport.

Brief facts and submissions are as under :-

2. On a complaint lodged by Director General of Shipping, Mumbai against accused no.1 Sanjay Agrawal and others for alleged criminal misappropriation of funds of Seamen's Provident Fund, R.C. No. 4/E/2002 dated 10.5.2002 was registered against accused persons including the applicant/ accused no.11 by the CBI, BSFC, Mumbai. On

13.5.2002, in the search of residential premises of accused no.11, documents along with passport was seized. The accused was charge-sheeted along with other accused for the offences punishable u/s.120-B r/w. 409, 420, 467, 468 of IPC and Sec. 13(2) r/w. 13(1)(c)(d) of Prevention of Corruption Act. He has submitted that the passport bearing No. B-3355846, issued by Regional Passport Office, Mumbai is submitted to the Court. Retention of the passport by the investigating agency/ prosecution amounts to impounding of the passport. This practice is not allowed in view of the ruling in the case of **Surendra Nanda V/s CBI (2008 CRI L.J. 1599)**. The applicant is desirous of renewing the passport as per procedure and he requires passport for the same. Hence, it is prayed that pending hearing and final disposal of the case, the passport be handed over to him.

3. CBI has filed reply at Exh.301A. The CBI has strongly opposed for return of the passport. It is submitted that, as per conditions in the bail order, the accused was directed to deposit the passport with the CBI. The CBI has kept the passport as per the condition imposed by the Hon'ble Court while granting bail. This condition cannot be challenged on the basis of decision in the case of **Surendra Nanda V/s. CBI (supra)**. There is reasonable apprehension that the applicant/ accused no.11 may leave India and may not return back after obtaining new passport. No cogent reasons for return of the passport has been stated. Hence, the application may be rejected.

4. Heard both the sides. Perused case record. Ld. Adv. Mr. Modi for the applicant/ accused has submitted on the line of his contentions. He has further submitted that, in view of the ratio of the case of **Surendra Nanda v/s. CBI (cited supra)**, passport cannot be

retained. The applicant wish to apply for renewal of passport. No purpose would be served by keeping the passport with the CBI. There is no stay operative to deal with this application. Hence, on all these grounds he submitted for return of the passport.

5. Per contra, Ld. PP Mr. Wankhede has strongly opposed the application and reiterated in the line of his reply. He has additionally submitted that, the case of **Surendra Nanda V/s. CBI** (supra) nowhere lays down that bail order can be modified. Facts of the case of **Surendra Nanda**, are totally different from the case in hand. There is every possibility that the accused may abscond on return of the passport. No case is made out or genuine grounds stated by the accused no.11 for return of the passport. Hence, the application may be rejected.

6. On going through the record, it reveals that the accused no.11 was released on bail as per order of the Hon'ble Court on 28.1.2004. As per bail order, the accused was released on PR and SB of Rs.5 Lakhs. The condition was imposed on the the accused that he shall not leave India without permission of this Court and all accused to deposit their passports with CBI, BSFC, Mumbai, within two weeks from the date of the order. It is undisputed that, pursuant to the bail order, the passport of the accused no.11 was deposited by him with the CBI, BSFC, Mumbai and since then, it has been retained by the CBI in their custody. Further it is undisputed that, the date of issuance of the passport was 5.2.2001 and term of the passport has expired on 4.2.2011. Thus, the passport is expired as on date.

7. In light of the judgment of **Surendra Nanda V/s. CBI** (*supra*), it is to be considered, as to whether the present application can be entertained. On going through the case of **Surendra Nanda** (*supra*), it is seen that, a passport was seized during the search and was retained by CBI officials. Hon'ble Special Judge, CBI, Patiala House Courts, New Delhi released the passport. The Hon'ble High Court reversed the order of the Ld. Special Judge, CBI and thereafter, being aggrieved by the order of the Hon'ble High Court, it was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court considered rival submissions and ruled that, the power to impound the passport vests with the passport authority u/s. 10(3) of Passport Act, 1967. The question as to whether retention of the passport with investigating agency or with the Court is exempted under the Passport Act, was also considered by the Hon'ble Apex Court. The Hon'ble Apex Court has observed in this connection, in para 15, as under :-

*“15. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104, Cr.P.C 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 a 'passport' is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C 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 (9<sup>th</sup> Edition pg. 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, Cr.P.C, though it can impound any other document or thing.”*

8. Thus, in view of the above ruling, it is crystal clear that, even the Court cannot impound the passport and the power to impound the same vests with the passport authority u/s.10(3) of Passports Act.

9. In the above cited case, in para 9, the Hon'ble Apex Court has ruled that, the power of the Court u/s. 104 of Cr.P.C. to impound any document or thing produced before it would exclude the passport. Therefore, in view of the ruling, it is clear that, the passport cannot be impounded by this Court.

10. In the instant case, the passport is expired and same is required for the purpose of its renewal. The apprehension of the CBI that the applicant/ accused no.11 may take undue advantage on return of the passport and may abscond, can be taken care of by imposing certain conditions on him in final order. In the net result, the applicant/ accused no.11 is entitled for return of the passport, subject to certain terms and conditions, as follows :-

#### **ORDER**

1. Application (Exh.301) in CBI Spl. Case No.83/2003 is hereby allowed.
2. Accused no.11 Pallav Kishore Ved is entitled for return of passport bearing no.B-3355846 from CBI, BS & FC, Mumbai.
3. Condition in the bail order that, the accused no.11 shall not leave India without permission of this Court, will remain intact and the accused to file a separate application in that regard, if he intends to travel abroad.
4. Accused no.11 Pallav Kishore Ved to inform this Court about the correspondence along with its copies with the Passport Authority pertaining to the renewal of the passport and its result, time to time.

5. Application(Exh.301) stands disposed of accordingly.

*(Dictated and pronounced in open Court).*



Date:-8.6.2022

**(S. P. NAIK-NIMBALKAR)**  
**Special Judge (CBI)**  
**Gt. Bombay**

Dictated on : 8.6.2022

Transcribed on : 9.6.2022

Signed by HHJ on : 9.6.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

Date 10.6.2022 at 1.25 pm  
UPLOAD DATE AND TIME

(Nitin V. Ubale)  
Selection Gr. Stenographer(Gr.1)

Name of the Judge (With Court room no.)	H.H.J. Shri. S. P. Naik-Nimbalkar (C.R. No. 51)
Date of Pronouncement of JUDGMENT/ ORDER	8.6.2022
JUDGMENT/ORDER signed by P.O. on	9.6.2022
JUDGMENT/ORDER uploaded on	10.6.2022