

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.05.2017  
DATED: 12.05.2017

C O R A M

THE HONOURABLE Mr.JUSTICE **M.S.RAMESH**

Crl.O.P.No.5521 of 2017

Kakulammarri Kalyan Srinivasa Rao

.. Petitioner

Vs.

The Central Bureau of Investigation,  
Bank Securities and Frauds Cell  
rep. By its Superintendent of Police,  
Bangalore,  
Karnataka.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 05.11.2016 passed by the learned Sessions Judge in Crl.M.P.No.16123 of 2016 and consequently direct the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai to release the passport of the petitioner.

For petitioner : Mr.Shanmugasundaram, Sr.C  
for Mr.J.Pothiraj

For respondent : Mr.K.Srinivasan  
Special Public Prosecutor for CBI Cases

## **ORDER**

A case was registered against the petitioner for the offence under Sections 120(b) r/w. 420, 468, 471 IPC, in which he was granted anticipatory bail by the learned Sessions Judge, Chennai on 05.11.2016 in CrI.M.P.No.16123 of 2016.

2.Heard the learned Senior counsel appearing for the petitioner as well as the learned Special Public Prosecutor for CBI Cases for the respondent.

3.The petitioner is aggrieved against the condition made therein whereby he was directed to surrender his passport before the Court and was directed, not to leave the country without prior permission of the Court.

4.Mr.Shanmuga Sundaram, learned Senior counsel for the petitioner submitted that it is the petitioner's fundamental right to travel abroad and he cannot be curtailed by an order directing to surrender the passport. The learned senior counsel stated that the

petitioner has produced substantial security before the Sessions court and that being a business man, he requires to travel frequently for his business purposes.

5.The legal question as to whether the police are empowered to retain the passport of an accused under the provisions of Cr.P.C., has come time and again before the Hon'ble Supreme Court and various other Courts and it has been held that the Courts exercising its power under the Cr.P.C., cannot impound the passport under the guise of seizure.

6.In support of his contention, the learned Senior counsel cited the judgment of the Hon'ble Supreme Court of India in ***Suresh Nanda Vs. Central Bureau of Investigation*** reported in **2008 (3) SCC 674**, wherein in para 15 to 18 reads as follows:

*"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 the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word impound has been defined to mean to take possession of a document or thing for being held in custody in accordance with law. Thus, the word impounding really means retention of possession of a good or a document which has been seized.*

*16.Hence, while the police may have power to seize a passport under [Section 102 Cr.P.C.](#) if it is permissible within the authority given under [Section 102](#) of Cr.P.C., 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 Cr.P.C.](#)), 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 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 Vs. Binapani Dei [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 10A](#) 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 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](#) (9th 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.”*

7.Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases on the other hand submitted that the investigation in the aforesaid crime No.4 of 2016 is in full swing and is at the final stage. The investigating officer has been co-ordinating with banks and other government officials with respect to the allegations mentioned in the FIR. The learned Special Public Prosecutor also submitted that the investigation is now posed to probe the diversion of funds through fictitious companies and the petitioner role is under investigation and therefore, if any order directing the release of passport, might be misused by the petitioner and also there is a likelihood of the petitioner to abscond from the clutches

of law. Hence, he opposed to grant the prayer as sought by the petitioner.

8.The objections raised by the learned Special Public Prosecutor for CBI Cases may not be of much relevance since what would be pertinent to decide in the present petition is the powers of police to retain the passport of the petitioner. The Passport Act which is a Special law will prevail over the provisions of the Cr.p.c., the General law.

9.Section 10(3)(e) of the Passport Act specifically deals with impounding of passport whereas Section 104 Cr.P.C., allows the Court to impound the document to produce before the Court. The Passport Act overrides the provision of Cr.P.C., for the purpose of impounding passport. In the present case in hand, the order directing to surrender the passport indefinitely amounts to impounding of the passport itself.

10.In view of the foregoing findings, the order dated 05.11.2016 passed in CrI.M.P.No.16123 of 2016 dated 05.11.2016, insofar as the condition to surrender the petitioner's passport

before the Court is illegal. Accordingly, the condition to surrender the petitioner's passport is set aside. It is also made clear that all other conditions imposed in the impugned order dated 05.11.2016 passed in Crl.M.P.No.16123 of 2016 dated 05.11.2016, by the Sessions Court, shall remain unaltered.

11.The Criminal Original Petition is allowed to the extent mentioned above.

12.05.2017

Index:Yes  
Internet:Yes  
DP

Note:Issue today

To

The Central Bureau of Investigation,  
Bank Securities and Frauds Cell  
rep. By its Superintendent of Police,  
Bangalore,  
Karnataka.



**M.S.RAMESH.J,**

DP

**ORDER MADE IN**  
**CrI.O.P.No.5521 of 2016**

**12.05.2017**

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