

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1892 OF 2022

R

BETWEEN:

SRI PRAVEEN SURENDIRAN
S/O SURENDIRAN SHIVARAMAKRISHNAN
AGED ABOUT 34 YEARS,
R/AT NO. A2052, ASSETZ EAST POINT
MARATHAHALLI OUTER RING ROAD,
BELLANDUR, BENGALURU – 560 103.

ADDRESS SHOWN IN
THE ADDITIONAL CHARGE SHEET
MANKIRI, II CROSS STREET,
KAMARAJA TENVADAL ROAD,
MANAGIRI, MADURAI, TAMIL NADU – 625 020.

... PETITIONER

(BY SRI ASHOK HARANAHALLI, SR.ADVOCATE A/W
SRI SRINIVAS RAO S.S., ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
CUBBON PARK POLICE STATION,
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU – 560 001.
2. M/S MEMG INTERNATIONAL INDIA PVT. LTD.,
M/S MANIPAL INTEGRATED SERVICES PVT. LTD.,
15TH FLOOR, JW MARRIOTT HOTEL
24/1, VITTAL MALLYA ROAD,

BENGALURU – 560 001
REPRESENTED BY ITS GROUP CEO
S.VAITHEESWARAN.

... RESPONDENTS

(BY SMT.YASHODA K.P., HCGP FOR R1;
SRI S.K.VENKATA REDDY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED ORDER DATED 02.03.2022 PASSED IN C.C.NO.7559/2019 BY THE IV ADDL.C.M.M., BENGALURU AND CONSEQUENTLY ALLOW THE APPLICATION SEEKING RELEASE OF THE PETITIONER PASSPORT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 02-03-2022 passed in C.C.No.7559 of 2019 by which, the IV Additional Chief Metropolitan Magistrate, Bangalore rejects the application of the petitioner for release of his passport.

2. Brief facts leading to the filing of the present petition, as borne out from the records, are as follows:-

On 26-12-2018 a case is registered against six accused for offences punishable under Sections 420, 465, 467, 468 and 471

of the IPC on a complaint registered by one Vaitheeswaran S, Group Chief Executive Officer of MEMG International India Private Limited. After completion of investigation, the police filed a preliminary charge sheet in C.C.No.7559 of 2019 against five persons mentioned therein and others for offences punishable under Sections 120B, 406, 408, 409, 465, 467, 468, 471, 477A, 506, 201 and 420 read with Section 34 of the IPC. Later, on further investigation, the police filed first additional charge sheet on 14.09.2019 adding accused 6 to 9. At this point in time, the petitioner was not arrayed as an accused.

3. A further report was made on further investigation and the police laid a second additional charge sheet on 11-01-2021. It is here the name of the petitioner figures and is arrayed as accused No.10. Several proceedings have gone on since then. The petitioner being aggrieved by the aforesaid proceedings had preferred Writ Petition No.21035 of 2021 and this Court on 09-12-2021 has stayed all further proceedings in C.C.No.7559 of 2019 against the petitioner. On 20-12-2021 the petitioner was

enlarged on bail by imposing two conditions viz., the petitioner was directed to execute a personal bond for Rs.1,00,000/- and furnish such documents of surety.

4. The present case concerns an application made by the petitioner before the trial Court seeking release of his passport on the ground that the son of the petitioner studies in a school at Paris – Sports Etudes Concept and was attending classes virtually. Since classes have now started physically, the petitioner wanted to accompany his son for getting him admitted in the school. This application is rejected by the trial Court. It is the rejection of the application that is called in question in the present proceedings. Therefore, these proceedings concern with the rejection of release of passport of the petitioner and not any other issue that is pending in plethora of cases between the parties.

5. Heard Sri.Ashok Haranahalli, learned senior counsel along with Sri.Srinivas Rao.S.S., learned counsel for petitioner

and Smt.K.P.Yashoda, learned High Court Government Pleader for respondent No.1 and Sri.S.K.Venkata Reddy, learned counsel for respondent No.2.

6. Learned senior counsel Sri Ashok Haranahalli would submit that several proceedings between the parties are pending consideration. The Apex Court has stayed all further proceedings in other cases. The case at hand is not an offshoot of those cases, but an independent case of an application, where the passport of the petitioner is seized, not impounded by the police and there is grave urgency for the petitioner to leave the country and get his son admitted to the school at France.

7. On the other hand, the learned counsel Sri S.K.Venkata Reddy appearing for the 2nd respondent/de-facto complainant, by filing elaborate objections, would contend that if the petitioner is let off, he would run away from the country and funds which have been misappropriated by the petitioner along with others would be parked elsewhere, thereby it would become difficult to secure presence of the petitioner in future, since

several proceedings are pending consideration between the parties. Therefore, the order rejecting release of passport does not call for any interference.

8. The learned High Court Government Pleader appearing for the State would also toe the lines of the learned counsel appearing for the 2nd respondent.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and in furtherance whereof, the issue that falls for my consideration is, ***‘whether the order rejecting release of passport of the petitioner, in the facts and circumstances of the case, is tenable in law?’***

10. The afore-narrated facts are not in dispute. The petitioner, though was not arrayed as an accused in the initial stages of investigation, is now accused No.10. When the petitioner was arrayed as an accused, he had gone absconding pursuant to which, the learned trial Judge in C.C.No.7559 of

2019 had issued a non-bailable warrant against the petitioner on 01-10-2021 and later on, being unable to trace the petitioner, a look out notice was issued on 26-10-2021 and the information was transmitted to all the Authorities including the Airport Authorities regarding issuance of non-bailable warrant and a look out notice. On 18-11-2021 when the petitioner/accused is alleged to have made an attempt to flee from the country he was arrested by the immigration department at the Bangalore International Airport and taken to custody till 20-11-2021 and the passport was also seized.

11. The trial Court, considering the bail application of the petitioner, refused to grant regular bail by coming to conclude that the petitioner may abscond. It is after rejection of the bail application, the petitioner preferred Writ Petition No.21035 of 2021 and this Court granted an interim order of stay of all further proceedings against the petitioner in C.C.No.7559 of 2019. Pursuant to the interim order of stay of further proceedings in a petition under Section 482 of the Cr.P.C. the

petitioner was released on bail. The interim bail granted on 20.12.2021 imposing two conditions was only on the ground that this Court by an interim order stayed further proceedings in the aforesaid case.

12. The petitioner has now come up with an application seeking release of passport for the reason that he has to travel to France for his son to get admitted to the school. The trial Court, considering the application filed by the petitioner and the objections to the said application, has passed an order rejecting the said application on the likelihood that the petitioner would abscond from the country. It is this order that drives the petitioner to this Court. Since it is an interlocutory order passed rejecting the application and its tenability that falls for consideration, it is germane to notice the application itself filed by the petitioner and it reads:

*“INTERLOCUTORY APPLICATION FOR RELEASE OF
PASSPORT.*

The 10th Accused submits as follows:

1. The 10th Accused was granted bail in the above proceedings by this Hon’ble Court vide order dated

20.12.2021 wherein this Hon'ble Court was pleased to impose two conditions wherein Accused No.10 has to execute a personal bond for Rs.1,00,000/- with a surety for like sum and cash security of Rs.10,000/- and Accused No.10 was directed to furnish documents relating to surety's identity and also if there is a change in the address of Accused No.10, the said Accused was directed to file an affidavit with full address and documents.

2. It is submitted that the complainant police while arresting 10th Accused on 18-11-2021 collected the passport of the 10th Accused and filed a requisition to keep the same in safe custody. Hence, the passport of the 10th Accused is currently in the custody of this Hon'ble Court.

3. It is submitted that the son of the 10th Accused i.e., Kum.Ishan Praveen goes to school in France at Sports Etudes Concept currently studying in 8th Standard (4th Grade in France) and due to the ongoing pandemic was attending classes virtually. The classes are about to commence physically due to which the son of the 10th Accused has to travel with his son to France from 03.03.2022 to 1-08-2022. Hence, since the passport is in the custody of this Hon'ble Court, the 10th Accused has preferred this application.

4. It is submitted that the above proceedings insofar as the 10th Accused has already been stayed in W.P.No.21035 of 2021 vide order dated 9-12-2021. Further, no condition pertaining to the passport of the 10th Accused or with respect to travel restrictions were imposed while granting bail in favour of Accused No.10. Hence, there is no legal embargo for this Hon'ble Court to consider the Application of Accused No.10.

5. It is submitted that the 10th Accused if the above application is not considered the 10th Accused would be put to immense hardship and loss which cannot be

compensated in any manner whatsoever as the education of the minor child of the 10th Accused would be immensely affected and on the other hand no hardship would be caused to the other side as investigation has already concluded and the proceedings pertaining to Accused No.10 has been stayed. The Accused No.10 is willing to return the passport immediately upon his return.

Wherefore, Accused No.10 most respectfully prays that this Hon'ble Court may be pleased to release his passport bearing No.Z5551511 and Old passport No.P3821785 in the interest of justice and equity."

(Emphasis added)

A perusal of the afore-extracted application would indicate that the petitioner wants to fly to France with his son to get his son admitted to the School and wants to stay at France from 03-03-2022 to 1-08-2022 close to six months and since the passport is in the custody of the Court, the application is filed.

13. The surety that the petitioner offers is that of his parents and, therefore sought release of the passport. The order passed upon the said application after considering the objections reads as follows:

*"02-03-2022
State by Sr.APP
Accused
For orders.*

ORDER ON APPLICATION FILED FOR
RELEASE OF PASSPORT

Sri AML, Advocate for accused No.10 – Praveen Surendiran filed this application praying court for release of passport of accused No.10 – Praveen Surendiran and in support of his application relied on Parvez NoordinLokhandwalla v. State of Maharashtra and another – (2020) 10 SCC 77.

2. Special PP filed objections and prays to reject the application.

3. Sri S.K.V.R. Advocate for de facto complainant filed objections through Spl.PP and prays to reject the application.

4. I heard both side and perused all materials on record.

5. Accused No.10 contended that his son is studying in 8th standard at Paris and he attended classes virtually. The classes are about to commence physically and his son has to attend the classes physically. Hence, Accused No.10 has to travel to France with his son Ishan and produced e-mails, birth certificate and certificate of schooling of Ishan. It is submitted that, at the time of granting bail there is no condition for travel restrictions. Hence, matter against accused No.10 is stayed and sought to release of passport.

6. This Court released accused No.10 on bail as per order dated 20-12-2021. This Court has not expressly imposed any restrictions on travelling of accused No.10, because at the time of grant of bail his passport was seized and produced in this Court. It is also important to note that passport of accused No.10 is seized in the present case for temporary period i.e., till conclusion of trial. Hence, if passport is released in favour of accused No.10, he will fly to France and then it is difficult to secure Accused No.10. Hence, looking at contents of application absolutely accused No.10

has not made grounds to allow his application. I went through Parvez Noordin Lokhandwalla v. State of Maharashtra and another – (2020) 10 SCC 77 and said decision will not be helpful to accused No.10, because present facts and grounds urged in the application are entirely different from that of said decision. Hence, under these circumstances and looking at facts and circumstances of the case, I proceed to pass following:

O R D E R

The application filed by Accused No.10 – Praveen Surendiran for release of passport is hereby rejected.

Sd/-

IV ACMM, Bangalore”

(Emphasis added)

14. In terms of the order (*supra*) what becomes necessary to be considered is, whether the trial Court could have rejected the application for release of the passport and further order retention of the passport till the conclusion of the trial. To consider this issue, it is germane to notice the provisions of the Criminal Procedure Code which empowers seizure. Section 102 of the Cr.P.C. empowers the Police to seize certain properties. Section 102 of the Cr.P.C. reads as follows:

“102. Power of police officer to seize certain property.—(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under

circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, 2 [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

(Emphasis supplied)

Section 104 of the Cr.P.C. deals with power of the Court to impound the document that is produced and reads:

“104. Power to impound document, etc., produced.—Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.”

The seizure of the passport, in the case at hand, has happened invoking power of the Police under Section 102 of the Cr.P.C. and the passport is retained by the Court, purportedly in terms of power under Section 104 of the Cr.P.C.

15. Issuance of passport and its impounding is dealt with under special enactment – The Passports Act, 1967 (‘the Act’ for short). Section 10 of the Act reads as follows:-

“10. Variation, impounding and revocation of passports and travel documents.—(1) *The passport authority may, having regard to the provisions of sub-section (1) of Section 6 or any notification under Section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.*

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

- (a) *if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;*
- (b) *if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;*

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

- (c) *if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;*
- (d) *if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;*
- (e) ***if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;***
- (f) *if any of the conditions of the passport or travel document has been contravened;*
- (g) *if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;*

(h) *if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.*

(4) *The passport authority may also revoke a passport or travel document on the application of the holder thereof.*

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules

made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

(Emphasis supplied)

Sub-section (3) of Section 10 empowers the Passport Authority to impound or cause to be impounded or revoke a passport or travel document, subject to the conditions that are stipulated in sub-section (3) of Section 10 of the Act.

16. One such condition of impounding of passport is that, if the proceedings in respect of an offence alleged to have been committed by the holder of the passport are pending before a criminal court in India. Therefore, the power of the Impounding Authority i.e., the Competent Authority under the Act is

traceable to clause (e) of sub-section 3 of Section 10 of the Act which is the only provision applicable to the case at hand.

17. It is not in dispute that the petitioner is facing criminal proceedings before the competent criminal Court and the Police after investigation have also filed charge sheet in the matter in which, the petitioner is arrayed as Accused No.10. Therefore, it is not a case where the passport of the petitioner cannot even be seized or impounded, but, by whom is the question.

18. The Passport Act is a special enactment and is trite that it being a special enactment would prevail over Section 102 or Section 104 of the Cr.P.C., which empower the Police to seize and the Court to impound any document. Impounding of any document produced before the Court cannot stretch to an extent that it can impound the passport. Therefore, the deposit of passport before the Court or passport being held before the Police, both will become without authority of law. The further observation of the Court that it would be in its custody till conclusion of trial is, clearly on the face of it, without authority

of law, as it would amount to impounding the passport. This very issue fell for consideration before the Apex Court in the case of **SURESH NANDA v. CBI**¹ wherein the Apex Court has held as follows:-

“8. Sub-section (5) of Section 165 CrPC provides that the copies of record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence whereas Section 104 CrPC authorises the court to impound any document or thing produced before it under the Code. Section 165 CrPC does not speak about the passport which has been searched and seized as in the present case. It does not speak about the documents found in search, but copies of the records prepared under sub-section (1) and sub-section (3).

9. “Impound” means to keep in custody of the law. There must be some distinct action which will show that documents or things have been impounded. According to Oxford Dictionary “impound” means to take legal or formal possession. In the present case, the passport of the appellant is in possession of CBI right from the date it has been seized by CBI. When we read Section 104 CrPC and Section 10 of the Act together, under CrPC, the court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport.

10. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 CrPC authorises the court to impound document or thing produced before it. Where there is a special Act

¹(2008) 3 SCC 674

dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special Act, the rule that “general provision should yield to the specific provision” is to be applied. See *DamjiValji Shah v. LIC of India* [AIR 1966 SC 135], *Gobind Sugar Mills Ltd. v. State of Bihar* [(1999) 7 SCC 76] and *Belsund Sugar Co. Ltd. v. State of Bihar* [(1999) 9 SCC 620: AIR 1999 SC 3125].

11. The Act being a specific Act whereas Section 104 CrPC is a general provision for impounding any document or thing, it shall prevail over that section in CrPC as regards the passport. Thus, by necessary implication, the power of court to impound any document or thing produced before it would exclude passport.

12. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10-A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. **The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the Passport Authorities under Section 10(3)(e) or by the Central Government or any designated officer under Section 10-A of the Act to impound the passport by**

the respondent exercising the powers vested under the Act.

13. *The learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) CrPC which states:*

“102. Power of police officer to seize certain property.—(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.”

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 [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 *generaliaspecialibus 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.

19. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10-A of the Act for impounding the passport of the appellant in accordance with law.”

(Emphasis supplied)

The Apex Court dealt with the very issue as to who would be the Authority to impound the passport. The Apex Court holds that neither the Police nor the Court invoking powers under Section 102 or Section 104 of the Cr.P.C. can seize or impound a passport. Impounding of a passport is by the Authority vested under the Act as depicted therein. It is not in dispute that the Authority under the Act is not even made aware of seizure or retention of the passport by the Police or before the Court.

19. The reliance placed on the judgment in the case of **PARVEZ NOORDIN LOKHANDWALLA v. STATE OF MAHARASHTRA AND ANOTHER**² would not come in aid to the contentions advanced by the learned senior counsel in the light of the fact that the issue before the Apex Court was entirely different than what is obtaining in the case at hand. The appellant therein was permitted to travel in the light of only a FIR pending consideration and the status of the appellant therein. There were no proceedings instituted by the Authorities under the Act in the aforesaid case. Therefore, the same would not be applicable to the facts obtaining in the case at hand.

20. The judgment in the case of **SURESH NANDA** (*supra*) is what covers the issue at hand and not the judgment in **PARVEZ** (*supra*). On a fusion of the facts, the Code, the Act and the judgment in the case of **SURESH NANDA** what would unmistakably emerge is that the Police do have power to seize the passport under Section 102 of the Cr.P.C. The passport so seized cannot lie indefinitely with the hands of the Police as

²(2020) 10 SCC 77

beyond a certain period seizure would amount to impounding, which have a world of difference between them and which power is not conferred to the Police under Section 102 of the Cr.P.C.

21. The power of impounding a document under Section 104 of the Cr.P.C. is available to a Court. This cannot stretch to an extent of impounding the passport. The passport coming within the purview of the Act and it being a special law would prevail over the provisions of Section 104 of the Cr.P.C. The Court can impound any document, but not the passport as it is dealt with under a special enactment. The power of impounding is available only to the Competent Authority under the Act, in terms of Section 10 of the Act. Wherefore, the order rejecting the release of passport by the Court observing that it is held in safe custody till the conclusion of the trial is unsustainable. Therefore, the petitioner becomes entitled for release of passport in his favour, as right to hold a passport and travel is, without doubt, held to be a fundamental right in plethora of judgments.

22. Since criminal proceedings are pending against the petitioner, the apprehension of the 2nd respondent that he would abscond and not be available for trial also requires to be considered. Fleeing justice or thwarting the course of justice would undermine the majesty of the law. Wherefore, to strike a balance between the rights of the petitioner and course of justice, I deem it appropriate to pass the following:

ORDER

- (i) Criminal Petition is allowed in part. The order rejecting release of passport by the trial Court stands quashed and a direction is issued to hand over the passport to the petitioner within 3 weeks from the date of receipt of a copy of this order.
- (ii) It is open to the respondents to approach the Passport Authority under Section 10 of the Passports Act, 1967 for impounding the passport of the petitioner in accordance with law, after affording a reasonable opportunity to the petitioner.

- (iii) The travel of the petitioner beyond the shores of this nation shall be only on further orders in Writ Petition No.21035 of 2021 pending before this Court.

**Sd/-
JUDGE**

bkp
CT:MJ