

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.59 OF 2018

Jignesh Prakash Shah]
Aged - 51 years, Indian Inhabitant,]
Residing at R Square, Plot No.29,]
Jai Hind Co-op. Hsg. Society,]
12, N.S. Road, J.V.P.D. Scheme,]
Vile Parle (West), Mumbai - 400 049.] .. Applicant

Vs.

(1) Central Bureau of Investigation,]
Banking Securities & Fraud Cell]
3rd Floor, Plot No.C-35A,]
"G" Block, Bandra-Kurla Complex,]
Mumbai - 400 098;]

(2) The State of Maharashtra] .. Respondents
(3)

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Mr.Amit Desai, Senior Advocate, Mr. Aabad Ponda, Ms.Anuja Jhunhunwalla i/b. M/s.Naik Naik & Co., Advocate for the Applicant.

Mr.H.S. Venegaonkar a/w. Mr.A.L. Gore, Advocate for Respondent No.1.

Mr.P.H. Gaikwad, APP for Respondent No.2- State.

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CORAM : PRAKASH D. NAIK, J.

**RESERVED ON : FEBRUARY 13 , 2018.
DELIVERED ON : JUNE 04, 2018.**

JUDGMENT :

With consent of both the parties, the application was heard for final disposal.

2 The applicant has invoked the revisional jurisdiction of this Court vide Section 397 of the Code of Criminal Procedure (Cr.P.C.), being aggrieved by order dated 28th September, 2017, passed by the Special Judge for CBI City Civil and Sessions Court, Greater Bombay in Misc. Application No.596 of 2017. The Matter was heard and order was reserved. Thereafter, there was change in roaster, which was followed by Summer Vacation.

3 The brief facts of the prosecution are as follows:

On 12th February, 2014, a report was filed by Deputy S.P. CBI BS & FC Mumbai against officials of PEC Limited (Project and Equipment Corporation of India Limited, New Delhi) & others as well as M/s.NSEL (National Spot Exchange Limited) and its officials, M/s.FTIL (Financial Technology India Limited) and its CMD and private parties/defaulters at Delhi, namely, M/s.Brinda Commodities Pvt. Limited, M/s. Tavishi Enterprises Pvt. Ltd., M/s.Dullison Cereals and Dullison Foods located at

Karnal, Haryana and unknown officials of Department of Consumer Affairs in connection with conspiracy amongst the accused during the period 2007 to 2013 to cheat PEC Limited and siphoning of its funds by floating accommodative and fraudulent paired contract for trading in agro commodities on the platform of NSEL without actually undertaking any genuine trade. The FIR was lodged on 12th February, 2014 for the offences under Section 120-B read with 409, 420, 467, 468, 471 and 474 of the Indian Penal Code (IPC) and under Sections 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988. It is further alleged that the accused have prepared fake warehouse receipts/allocation letters and other documents in prosecution of conspiracy hatched, which caused wrongful loss to PEC Limited and corresponding wrongful gain to the accused. On completing investigation, final report was submitted to the Court against the accused on 21st December, 2016.

4 During the course of investigation on 13th March, 2014, search was conducted by the investigating machinery at the residential and office premises of the applicant and various documents were seized including passport bearing No.Z2080612 and previous passports bearing nos.G4723509, F4759758, E3617176 and M242549.

5 The applicant preferred an application for return of passport before the Special Court which was numbered as Miscellaneous Application No.30 of 2015. In the said application, it was contended that the passport of the applicant was seized by CBI on 13th March, 2014, during the search of his premises. The investigation is over. Since the applicant is the director of the company and in connection with the business as well as family affairs, he intend to move abroad, he is unable to do so due to seizure of passport. The said application was opposed by CBI. It was stated that the offence is serious in nature. Considering the gravity of the offence and likelihood of applicant fleeing away from justice, the passport is required to be detained till completion of investigation. The said application was rejected by order dated 26th March, 2015.

6 After filing the charge-sheet, the case was numbered as CBI Special Case No.62 of 2016. The summons were issued to all the accused including the applicant. The applicant appeared before the Special Judge on 22nd March, 2017. The applicant was granted bail by the learned Special Judge on the same day. While granting bail, the Court imposed the conditions that the applicant shall not leave India without the permission of the Court as well

as the CBI. He was also directed to furnish his permanent address as well as contact number to CBI and to furnish the addresses of his two relatives along with their permanent address and contact numbers.

7 The applicant thereafter preferred an application before the Special Judge viz. Miscellaneous Application No.596 of 2013 for return of his passport. The said application was preferred on 3rd May, 2017. In the application, it was contended that the earlier application for return of passport was rejected by the said Court on the ground that investigation is in progress. However, thereafter there is significant change in the circumstances, because the CBI has completed the investigation in the matter and filed a charge-sheet in the Court. The applicant is also granted bail by the Court on 22nd March, 2017. It was also contended that the co-accused had preferred an application before the said Court seeking return of passport which was allowed by order dated 27th October, 2014. It was also submitted that the seizure of the passport to the applicant by CBI is illegal.

8 The application was opposed by respondent - CBI by filing reply. The CBI opposed the prayer on the ground that the

applicant has played a major role in the case. Grant of bail does not imply that he is exonerated in the case. It was also stated that the accused - applicant may flee or abscond from the country hampering the case of the prosecution. The Special Judge vide order dated 28th September, 2017, rejected the said application.

9 Mr.Desai, learned Senior Advocate appearing for the applicant submitted that the learned Special Judge has committed a grave error in rejecting the application for return of passport and further issuing directions to the respondents to forward the passport to the passport Authority, to adjudicate on impounding of passport of the applicant. He advanced several submissions to assail the impugned order dated 28th September, 2017, which can be summarized as follows:-

- (i) The passport was seized on 13th February, 2014. there is no explanation as to why the same was seized;
- (ii) The investigation was completed and the charge-sheet has been filed. The charge-sheet do not deal with relevance of the passport. There is no explanation with regards to seizure of passport and how it is relevant for the

prosecution case.

- (iii) The co-accused had preferred an application for return of passport during the pendency of investigation which was returned to the said person;
- (iv) There is no material on record to justify the apprehension of fleeing justice expressed by CBI. The applicant had cooperated with the investigation. He was granted bail by the Special Court with the condition that he shall not leave India without the permission of the Court;
- (v) Seizure of passport is illegal and untenable in law. The Special Court has no jurisdiction to direct the CBI to forward the passport to passport Authority;
- (vi) The passport is not an incriminating document in the prosecution case and the same is not part of list of documents among the charge-sheet filed against the accused. It is not an evidence against the applicant - accused and the seizure itself was illegal;

(vii) The trial Court has misread and misunderstood the law laid down by the Hon'ble Supreme Court in the case of **Suresh Nanda (Supra)**. The CBI never chose to take any steps towards impounding of the applicant's passport under the relevant provisions of the Passport Act by Passport Authority. Nothing had prevented them from taking such steps and there is omission to do so which clearly show that they did not feel that it was a fit case for impounding the passport of the applicant;

(viii) The application for return of passport was clearly supported by the judgment of the Hon'ble Supreme Court in the case of **Suresh Nanda (Supra)**, which was ignored by the trial Court. The Court failed to appreciate that even in the said case, the passport was directed to be handed over to the owner of the passport;

(ix) The seizure of passport is illegal. Under Section 102 of Cr.P.C., the CBI ought not to have seized the passport, as the same was not suspected to have been stolen or creating suspicion of commission of any offence. The seizure of passport and its retention amounts to impounding of

passport, which cannot be done by the investigating machinery as impounding of passport is a prerogative of the passport Authority under Section 10(3) of the Passport Act;

10 Mr.Desai, relied upon the following decisions:

- (1) ***Suresh Nanda Vs. Central Bureau of Investigation;***
- (2) ***M.T. Enrica Laxie Q Anr. Vs. Doramma & Ors.¹;***
- (3) ***S. Sathyanarayana Vs. State of Karnataka²;***
- (4) ***Sir Mohammed Tasnim Vs. State of Karnataka³;***
- (5) ***Devashish Garg Vs. Directorate of Revenue Intelligence & Ors.⁴;***
- (6) ***Veenita Gupta Vs. State⁵;***
- (7) ***State of Maharashtra Vs. Tapas D. Neogy⁶; and***
- (8) ***Avinash Bhosale Vs. Union of India⁷.***

11 Shri Venegaonkar, learned advocate appearing for

1 2012 SC 2134

2 ILR 2003 KAR 883

3 OLR 2015 KAR 5225

4 LPA628/2017 and CM Appl.34731-34733/2017, decided on 22.09.2017

5 Cri.R.C.No.1062 of 2010, decided on 02.11.2010

6 (1999) 7 SCC 685

7 WP (Cri) No.2432 of 2007, decided on 08.10.2008

respondent no.1 submitted that there is no infirmity in the order passed by the learned Special Judge. The applicant is involved in serious crime and is likely to abscond in case the passport is handed over to him. He has played major role in crime. It is submitted that the passport was seized during the course of investigation on 13th March, 2014. First Information Report was registered on 12th February, 2014. The search was carried out at the instance of the investigating Authority and during the search, the passport was seized within one month after registration of FIR in accordance with Section 102 of the Cr.P.C. The applicant played a major role in the crime which is subject matter of the prosecution initiated against him. Several investors were defrauded. The application preferred by the applicant was vague and no specific reason was assigned for return of passport. The prayer made in the application do not fit it in the application for return of property i.e. passport. The police have power to seize the passport during the course of investigation. The trial Court has rightly rejected the application for return of passport. It is further submitted that the learned Special Judge has directed that the passport Authority shall decide the question of impounding passport by following principles of natural justice and thus no prejudice is caused to the applicant by impugned

order. There is no illegality in the orders passed by the Special Judge directing the CBI to forward the passport to a concerned Authority. It is submitted that the right of personal liberty guaranteed under Article 21 of the Constitution of India is not an absolute right but is qualified in view of pending prosecution against the accused. In order to ensure that the applicant was not leaving India without permission of the Court, which is one of the conditions imposed by the Court while granting bail, the CBI had retained the passport. He submitted that the directions issued by trial Court were in consonance with observations of Supreme Court in the case of **Suresh Nanda (Supra)**. It is, thus, submitted that the view is devoid of merits and the same be rejected. Shri Venegaonkar relied upon the decision of this Court in the case of **Singaram Pandiyan Vs. State of Maharashtra** delivered in Criminal Revision Application No.469 of 2008.

12 On analysis of the documents on record it is undisputed that the search was conducted by CBI on 13th March, 2014 and the passports in question were seized by them. The search was conducted in pursuant to registration of FIR dated 12th February, 2014. Pending investigation, the applicant was not arrested by CBI. However, on completing investigation, charge-

sheet was filed before the Special Judge for CBI. Summons was issued by the Court to the applicant and in pursuant to that the applicant appeared before the Court on 22nd March, 2017 and applied for bail. The learned Special Judge allowed the said application on the same day. While allowing the said application, it was observed that it cannot be overlooked that on entire investigation charge-sheet is filed and it is not the case of the investigating agency that any further investigation required in connection with the present applicant. It was also observed that the applicant and others were not arrested by investigating agency during the investigation or on filing the charge-sheet. On summons issued by the Court, the applicant *suo motu* and voluntarily appeared before the Court. This being the position, it can be safely observed that there is no chance of fleeing away of the applicant - accused from justice. While granting bail, the learned Special Judge imposed certain conditions including the directions to the applicant not to leave India without prior permission of the Court as well as CBI. The earlier application for return of passport was rejected on 26th March, 2015 on the ground that the investigation is still incomplete and at primary stage and if applicant's presence is required all the while. It was observed that the passport is required to be returned according

to precedent and law laid down by the Hon'ble Supreme Court, however, being special case and huge public money is involved, it is not desirable to exercise the discretion and return the passport.

13 Prior to that, the co-accused had preferred an application before the said Court and prayed for return of passport. While allowing the said application by order dated 27th October, 2014, preferred by the co-accused Joseph Massey, it was observed that at this stage merely an offence is registered against the said applicant and the investigation is going on. It is not the case wherein there is likelihood of fleeing away from justice and the applicant and his family is residing at Mumbai. Moreover, merely allowing the applicant to renew his passport, it cannot be observed that the Court facilitates him to move abroad. The Court directed CBI to return the passport to the said applicant on certain conditions which included the directions to the said applicant not to leave India without taking prior permission from the CBI or the Court. After grant of bail to this applicant, he preferred an application for return of passport. The learned Special Judge rejected the application and observed that the decision in the case of **Suresh Nanda (Supra)**, is binding on

the Court. The Court, however, directed CBI to send the passport of the applicant along with a letter to passport Authority clearly stating that the seized passport deserves to be impounding under Section 10(3) of the Passport Act. The Court referred to the observations of the Supreme Court in paragraph No.16 of the aforesaid decision, wherein it was observed that the police may have power to seize the passport under Section 102 of Cr.P.C., if it is permissible but it does not have power to retain or impounding the same because that can be done by the passport Authority under Section 10(3) of the Passport Act. Hence, if the police seized the passport which it has power to do, the same must be sent along with letter to the passport Authority stating that the passport deserves to be impounded being one of the reasons mentioned in Section 10(3) of the Act. Hence, as per the directions of the Supreme Court, the Court is duty bound to send the passport Authority under Section 10(3) of the Passport Act.

14 The first application as aforesaid preferred by the applicant for return of passport was rejected on the ground that the discretion cannot be used in favour of the applicant. However, application preferred by the co-accused for return of

passport on the ground that it was required to renew was allowed by the trial Court during the pendency of investigation. The said order dated 27th October, 2014 does not indicate that the passport should be returned back by the said co-accused after its renewal, but, as a matter of caution apparantly the condition was imposed directing the said accused not to leave India without taking prior permission from the CBI or Court. While deciding the application for bail preferred by the applicant, CBI did not agitate before the Court that the passport of the applicant is required to be retained. Whereas, the Court was pleased to impose the condition that the applicant shall not leave India without the prior permission of the Court. It is pertinent to note that the conditions imposed by the trial Court while granting bail did not prohibit him from travelling abroad, but, a limited condition was imposed that before doing so, he would seek permission from the Court as well as from the CBI. The order granting bail, therefore, does not create absolute bar on the applicant to travel abroad. Although, the investigating agency has seized the passport and had opposed return of the same. It is obvious that they were aware of the directions of the Supreme Court in Suresh Nanda's case, but, they never chose to take any step to initiate impounding of

passport of the applicant under the provisions of the Passport Act, 1967. The passport was seized on 13th March, 2014 and since then it continued to be in custody of CBI. The investigating agency did not raise contention while opposing the application preferred by the applicant for return of passport that there was any necessity to impound the passport or that they are taking any steps in that regard. The directions of the trial Court to the investigating agency to send the passport to the passport Authority stating that the same deserves to be impounded under Section 10(3) of the Passport Act, 1967, were unwarranted. The applicant had preferred an application for return of passport, however, the same was not granted and the Court directed the CBI to forward the passport to the passport Authority.

15 The passport was purportedly seized under Section 102 of Cr.P.C. There is nothing to show that the passport was suspected to have been stolen nor the passport was found under circumstances which creates suspicion of the commission of any offence. In connection with Section 102 of Cr.P.C., if the property seized is not incriminating or involved in any offence, nor any offence is disclosed after seizure of the property, it cannot be subject matter of seizure under Section 102 of Cr.P.C. The learned

counsel for the respondent submitted that the passport was an incriminating documents, but, there was nothing to substantiate the said contention. Even, before the trial Court while opposing the application for return of passport, nothing was brought on record to point out that the passport was an incriminating document. The submission of learned counsel for the applicant that passport is not part of the charge-sheet and not listed as incriminating document in the charge-sheet was not countered. In the reply opposing application for return of passport preferred by applicant, it was stated that, although the passport is not an incriminating document, by using the same the accused may flee or abscond from country hampering the case of the prosecution. In the case of Suresh Nanda, the Supreme Court has categorically stated that the police has the power to seize the passport under Section 102(1) of Cr.P.C. But, it does not have powers to impound the same and such powers are available with the passport Authority under Section 10(3) of the Passport Act, 1967. In the present case, the respondent CBI under the guise of seizure of the passport has retained the same for almost three years, which amounts to impounding and not permissible under law.

16 Section 102 of the Code of Criminal Procedure read 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, 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.]”

17 The police officer during the course of investigation can seize any property under Section 102 of Cr.P.C., if the said property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property is not suspected of commission of

the offence which is being investigated into by the police cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102 (1) and no other. One of the ground raised by the applicant challenging the impugned order is that the police officer has no power under Section 102 of Cr.P.C. to seize the property (passport), as the same was not incriminating document within the purview of the said provisions. The language used in Section 102 of the Code defines the powers of the police officer to seize the property specially where the allegations of the commission of an offence is levelled. Thus, the police officer has no Authority or power to seize the property when it is not suspected to have been stolen, nor it is found under circumstances which create suspicion of the commission of any offence having been committed unless discovery of property leads to suspicion of offence having been committed. The seizure of passport itself was illegal. In the present case, the passport Authority has not passed any order of impounding the passport of the applicant. The respondent has retained the possession of the passport from the date it was seized. It is apparent from the impugned order that the Court has applied the rule in the case of **Suresh Nanda (Supra)**. However, the Court permitted to retain the passport and facilitated its onwards

transmission to the passport office.

18 In the case of **Suresh Nanda (Supra)**, the passport was seized pursuant to registration of FIR. Passport seized during the search was retained by the investigating officer. An application was moved before the Special Judge CBI for release of the seized passport. That application was allowed and ordered to release the passport subject to certain conditions. CBI preferred criminal Revision Petition before the High Court which reversed the order of the Special Judge and refused to release the passport. The order of the High Court was challenged before the Supreme Court. By contending that the power to impound the passport has to be exercised under Sub-section (3)(e) of Section 10 of the Act. The aforesaid provisions provides for impounding of passport, if the proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel documents is pending before a criminal court in India. The passport Authority has power to impound the passport under Section 10 of the said Act. Section 10(3)(e) of Passport Act reads as under:

“10(3) The passport authority may impound or cause

to be impounded or revoke a passport or travel document,—

- (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;”*

19 In the light of statutory provisions of the Passport Act and the Code of Criminal Procedure, the Hon'ble Supreme Court in the case of **Suresh Nanda (Supra)** has dealt with the issue relating to impounding of passport and it would be appropriate to quote relevant paragraphs of the said decision which are necessary to deal with the impugned order passed by the trial Court:

“10 Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C. authorizes the Court to impound document or thing produced before it. Where there is a special Act 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 Passport Act is a special act, the rule that general provision should yield to the specific provision is to be applied. See : Damji Valaji Shah & another Vs. L.I.C. of India & others [AIR 1966 SC 135]; Gobind Sugar Mills Ltd. Vs. State of Bihar & others [1999(7)

SCC 76]; and Belsund Sugar Co. Ltd. Vs. State of Bihar and others [AIR 1999 SC 3125].

11 The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. 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 10A 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 10A of the Act to impound the passport by the respondent exercising the powers vested under the Act.

13 Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the Cr.P.C. 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) Cr.P.C, 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 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 Passport 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.”

On reading the aforesaid observations, it is clear that the Passport Act is a special act relating to matter of passport whereas Section 104 of Cr.P.C. is a general provisions for impounding any document or thing and the provisions of Passport Act shall prevail upon the section in Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport. The police may have power to seize the passport under Section 102 of Cr.P.C. But, it does not have power to impound which can be done only under Section 10(3) of the Passport Act. Mr.Venegaonkar, however, stressed upon the observations of the Supreme Court in paragraph 16 of the said decision wherein it was observed that if the police seizes a passport (which it has

power under Section 102 of 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 Passport Act. It is, thereafter, for the Passport Authority to decide whether to impound the passport or not. Mr. Venegaonkar submitted that the CBI had seized the passport in accordance with Section 102 of Cr.P.C. and retained the same. He further submitted that in the light of the aforesaid observations, the order passed by the trial Court cannot be called into question as the trial Court has observed that the CBI has to forward passport to the Passport Authority with requisite letter. He further submitted that in accordance with the said observations the Passport Authority is directed to deal with the issue of impounding after hearing the applicant. Mr. Desai, per contra submitted that for more than three years the passport was lying with the respondents and they never chose to forward the same to the Passport Authority for initiating action in accordance with Section 10(3) of the Passport Act. He further submitted that the seizure of passport itself was illegal and retention of passport for such a long time amounts to impounding which was contrary to law and the illegality cannot continue perpetually. There is much substance in the submission

advanced by Mr.Desai. In the present case, the Passport Authority had not yet passed the order of impounding the passport. It is only the CBI which had retained possession of the passport which in substance amounts to impounding. The Supreme Court in the above decision has observed that such retention is clearly illegal. It is also observed that under Section 10-A of the Act, retention by Central Government can only for four weeks and thereafter it can only be retained by an order of the Passport Authority under Section 10(3) of the Passport Act. It was also observed that even Court cannot impound the passport. The contention of respondents that the passport was seized and impounded by exercising powers under Section 102 and other provisions of the Code is devoid of merits. It is also relevant to note that although in paragraph 16, the Supreme Court has stated that the police must send the passport to the Passport Authority stating that the seized passport deserves to be impounded under Section 10(3) of the Act, the order of the High Court was set aside and the respondents were directed to hand over the passport to the appellant. The Supreme Court had also made it clear that it shall be open to the respondents to approach the Passport Authority under Section 10A of the Passport Act, for impounding the passport of the appellant therein in accordance with law. The

said directions were issued in the light of the fact that the passport was retained by the respondents after the same was being seized under Section 102 of Cr.P.C. for a long period of time. The Supreme Court has also made it clear that even seizure under Section 102 of Cr.P.C. can be done if it is permissible in law which should mean that the same should be done in consonance with the requirement of Section 102 of Cr.P.C. In the present case, there is nothing to show that possession of passport is incriminating circumstance. The retention of passport by CBI has not been done in conformity with law as there is no order of Passport Authority under Section 10(3)(e) or by Central Government or designated officer under Section 10-A of the Passport Act. The observation in paragraph no.16 of **Suresh Nanda's (Supra)** case that the police seized passport (which it has power to do under Section 102 of Cr.P.C.), and, thereafter, the police must send it to Passport Authority with letter has to be understood and read in conjunction with the observation made in the beginning of the same paragraph which starts with sentence that, while the police may have power to seize a passport under Section 102 of Cr.P.C., if it is permissible within the Authority given under Section 102 of Cr.P.C. The question of forwarding passport immediately after seizure may arise if the seizure is

within parameters of Section 102 of Cr.P.C. The observations of Supreme Court that seizure of passport under Section 102 of Cr.P.C. if permissible, would mean it qualifies all requirement of said provisions. In present case, the seizure does not fit within the purview of Section 102 of Cr.P.C. For the reasons stated in the said decision, the Supreme Court did not direct that the passport be sent to Authority and directed that it shall be returned to appellant. In the circumstances, the directions of the trial Court were uncalled for. It is pertinent to note that even while opposing the said application, the CBI did not contend that they intend to move an application before the Passport Authority in accordance with Section 10 of the Passport Act.

20 Mr.Venegaonkar, however, strongly relied upon the decision of this Court in the case of **Singaram Pandian Vs. State of Maharashtra (Supra)**. On reading the said decision, it is clear that the Court had no occasion to deal with the requirement of Section 102 of Cr.P.C. and the issues raised in the present application. In another decision of the Division Bench of this Court in the case of **Avinash Bhosle (Supra)**, it was observed by this Court that in accordance with the decision of the Supreme Court in the case of **Suresh Nanda (Supra)**, the act of

respondents in that petition, impounding passport is without authority of law. The Court directed return of passport and did not direct the respondents to forward it to Passport Authority and reserved liberty to initiate action under the Passport Act. In the factual aspects involved in the present matter, the directions issued by the trial Court after a period of about more than three years were not warranted. The seizure was contrary to Section 102 of Cr.P.C. Retention of passport was illegal and allowing continuation of retention is improper. In the case of ***M.T. Enrica Lexie & Anr. (Supra)***, the Supreme Court has considered the requirement of exercising powers under Section 102 of Cr.P.C. and it was observed that the police can seize any property during the course of investigation, if it is alleged to be stolen or is suspected to be stolen or is the object of the crime under the investigation or has direct link with the commission of offence for which the police officer is investigating. The Karnataka High Court in the case of ***S. Sathyanarayana (Supra)*** considered the action of impounding the passport in purported exercise of powers under Section 102 of Cr.P.C. The action was challenged on the ground that the police officer has no power under Section 102 of Cr.P.C. To seize any property which may be alleged to be stolen or have been suspected to have been stolen. In that case,

the police who conducted and seized certain properties including the passport of the parties therein, which was not the subject matter of theft, nor seizure of passport has created any suspicion of commission of offence. The offences alleged against the petitioner therein are forgery and misappropriation of funds. Possessing a passport is not an incriminating circumstances. The application for return of passports were made before the trial Court which was rejected. On analyzing language of Section 102 of the Code, it was observed that there is no occasion to the police to seize the property, if there is no allegation or where there is no suspicion of commission of the offence or where the circumstances do not create any suspicion for commission of offence, in relation to the said property. The order of the trial Court was set aside and the prayer to retain the passport was allowed. In another decision relied upon by Mr.Desai delivered by Karnataka High Court in the case of **Sir Mohammed Tasnim (Supra)**. The Court relied upon the decision in the case of **Suresh Nanda (Supra)** while dealing with similar issue. It was observed that the Passport Authority had not passed any order of impounding the passport and the same was retained from the date of seizure, which was illegal in terms of the said decision of the Apex Court. In another decision of Delhi High Court in the

case of **Devashish Garg (Supra)**, the question which arose before the Court was whether in the light of the decision in case of **Suresh Nanda (Supra)** where it was appropriate to the Court to hold that impounding of passport without initiation of proceedings under the Passport Act is unauthorized and then to direct the respondents therein to forward the passport to the concerned Regional Passport Officer for initiating the proceedings for impounding / suspension of the passport in accordance with the provisions of the Passport Act, 1967. The trial Court in the said case had also directed that in the event proceedings are not commenced within a period of two weeks from the date of the order by the Passport Authority, the passport be returned to the petitioner therein. While setting aside the said order, the Delhi High Court in the case of **Devashish Garg (Supra)** took into consideration the observations in the case of **Suresh Nanda (Supra)** and in paragraph 6 observed as follows:

“6 It is evident from the impugned order that the learned Single Judge was alive to and in fact applied the rule in Suresh Nanda (supra). However, it is at the same time facially apparent that instead LPA 628/2017 Page 6 of 7 of quashing the impounding

order, the Court permitted retention of the passport and facilitated its onward transmission to the Regional Passport Officer which in effect itself amounts to impounding. This kind of impounding was frowned upon and held to be unauthorized in Suresh Nanda (supra) when it was declared that "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." Thus, the facilities or otherwise impounding, in our opinion, was not in order. Therefore, the directions in paragraph 6 requiring the forwarding of the passport to the Regional Passport Officer is hereby set aside. The passport shall be released forthwith to the appellant. This will, however, not preclude the Regional Passport Officer from initiating proceedings under Section 10 (1) of the Passport Act, 1967 in line with the Single Judge's observations and declarations."

21 In the case of **Avinash Bhosle (Supra)** the Court considered in detailed observations in the case of **Suresh Nanda (Supra)** and observed that in view of the clear pronouncement by the Supreme Court, holding that the Passport Act to be a

complete Code in dealing with the impounding of passport, there is no *iota* of doubt that the respondent's act of impounding the petitioner's passport is without Authority of law. The submission made on behalf of the respondents that the impounding of passport could be made having regard to general provisions of the Income Tax Act, regulating the seizure of documents cannot be accepted. It can be relevant to note that one of the submissions advanced by the learned Solicitor General that right to hold a passport and travel abroad is not an unqualified and absolute right and the same cannot be subject to regulations. The Passport Act, though enacted to regulate issuance and rectification of passport, thereby no amounts if the only statute which empowers the executive Authority to retain or impound a passport. The Passport Authority to impound the passport under Section 10(3) is not exhaustive and there are other statutes enabling exercise of similar or analogous powers in relation to retention of passport, then, those powers would also be available to the Authority for impounding the passport.

22 In the decision of the Madras High Court in the case of **Veenita Gupta (Supra)**, which was also placed into service by Mr.Desai, the prayer of the petitioner was for return of the

passport. It was contended that though the police have power to seize any document including passport, the Passport Act being an special enactment, its provisions relating to impounding of passport will prevail over the provisions found in the general law, namely, the Criminal Procedure Code. The respondents had contended that the passports were necessary for the proof of the prosecution case as the entries were found therein regarding the visits of the petitioners to foreign country during a particular period and the same are relied upon by the prosecution to prove the charges against the accused. The Court relied on the aforesaid decision in the case of **Suresh Nanda (Supra)** and took a view that for the purposes stated by the respondents, the passport need not be impounded much against the provisions of Passport Act, dealing with the impounding of passport. It was also observed that the order passed by the trial Court would amount to an order impounding the passport of the petitioner and others which could not have been done by the Court below. In the circumstances, the order of the trial Court was set aside and the passports were directed to be returned to the petitioner. Considering the observations of the Courts in the aforesaid decision, it is clear that the power of impounding are vested with the Passport Authority. In the circumstances, the passport was

seized by the respondents on 13th March, 2014. Retention of passport for such a long period amounting to impounding, which is not permissible in law. The illegality cannot continue in perpetuity. It is within the domain of the Passport Authority to initiate action under Section 10(3)(e) of the Passport Act. In the light of the observations of the Supreme Court in the case of **Suresh Nanda (Supra)**, the decision can be taken by such Authority after hearing the passport holder. The illegal impounding therefore cannot be continued by handing over the passport by the respondents to the Passport Authority after a lapse of more than three years. However, it would be open to the Passport Authority to initiate any action under Section 10(3)(e) of the Passport Act. The passport, however, is required to be returned to the applicant. This order is without prejudice to the rights and contentions of the respondents any other Competent Authority, Passport Authority to initiate action and of impounding under the provisions of the Passport Act. It may not be understood that this Court has made any observations on the merits of the action to be initiated under the Passport Act. It may not be also understood that this Court has made any observations on the right of the petitioner to travel abroad, which has to be in consonance with the conditions imposed by the trial Court while

granting bail. The applicant shall strictly adhere to the conditions of bail imposed by the trial Court.

23 In view of the above, I pass the following order:

:: ORDER ::

- (i) Criminal Revision Application No.59 of 2018, is allowed;
- (ii) The impugned order dated 28th September, 2017, is set aside and the respondent is directed to return the passport of the applicant within a period of three weeks from today;
- (iii) The respondents / Passport Authority will be at liberty to initiate the proceedings for impounding the passport in accordance with Section 10(3)(e) of the Passport Act, 1967, and, in the event, such proceedings are initiated, the Passport Authority shall deal with the same in accordance with law, without being influenced by the observations made in this order;

(iv) Criminal Revision Application No.59 of 2018
stands disposed of.

(PRAKASH D. NAIK, J.)

