IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4781 OF 2023

BETWEEN:

MR. FRANCIS ZAVIER CRASTO,
S/O SYLVESTER PETER CRASTO,
AGED ABOUT 41 YEARS,
R/AT NO.15, 2ND FLOOR,
YUNUS BUILDING,
TRINITY STREET,
MUMBAI - 2.

...PETITIONER

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR
SRI. KARIAPPA N. A., ADVOCATE)

AND:

STATE OF KARNATAKA,
BY SOLADEVANAHALLI POLICE STATION,
BANGALORE - 560 064.

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001)

...RESPONDENT

(BY SRI. MAHESH SHETTY, HCGP)

THIS CRL.P IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 05.05.2023 PASSED IN S.C.NO.90/2015 ON THE FILE OF VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU AS PER ANNEXURE-B AND

CONSEQUENTLY DIRECT THE HONOURABLE COURT BELOW TO DELIVER THE TWO PASSPORTS MARKED AS EXHIBIT P-17 AND EXHIBIT P-18 WHICH WERE SUBJECTED TO PF.NO.39/2015 TO THE PETITIONER AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 05.05.2023 passed in S.C.No.90/2015 rejecting an application filed under Section 452 of the Cr.P.C. seeking release of Exhibits P17 and P18, which were passports that were made subject matter of the PF.No.39/2015.

2. Heard Sri. Hashmath Pasha, learned Senior counsel for Sri. Kariappa N.A., learned counsel appearing for the petitioner and Sri. Mahesh Shetty, learned HCGP appearing for the respondent.

3. The petitioner gets embroiled in a crime, in crime No.72/2015 and pursuant to the said registration of the crime, passports of the petitioner was seized and subjected to PF.No.39/2015 and marked in S.C.No.90/2015 as Exhibits P17 and P18. The Sessions Court in terms of the order dated 12.04.2023, acquits the petitioner, but does not pass any order

under Section 452 of the Cr.P.C. with regard to the passports that was seized as aforesaid. This drives the petitioner to file an application invoking Section 452 of the Cr.P.C. for return of the passports. The concerned Court rejects the application on the ground that the appeal period for preferring an appeal against the order of acquittal, is yet to get over, and therefore, it cannot be released. It is this order that drives the petitioner to this Court in the subject petition.

4. The learned Senior counsel appearing for the petitioner would submit that Section 452 of the Cr.P.C. does not empower such orders to be passed by the concerned Court on the ground that an appeal would be filed in future and therefore, the articles that are seized, which are subject matter of the PF cannot be released.

5. The submission of the learned counsel though is sought to be refuted by the learned HCGP, he would admit that such an order would not be within the power under Section 452 of the Cr.P.C.

6. The issue now lies in a narrow compass. The acquittal of the petitioner is not in dispute, as it is in terms of

order dated 12.04.2023, while so doing no order is passed with regard to P.F.No.39/2015, which were the passports of the petitioner. An application comes to be filed for such release and the application comes to be rejected by the concerned Court observing as follows:

> "***REASONS***
>
> *6. The accuse has filed the instant application to release his passports seized by the complainant police in PF.No.39/2015. It is pertinent to mention here that the judgment was passed by this court on 12.04.2023. Hence, the appeal period is not yet over. The application filed by the accused for release of his passports is premature. The said passports cannot be released to the custody of the accused till the appeal period is over. Further, the prosecution has filed objections stating that they have applied for certified copy of the judgment passed by this court and they are in the process of taking a decision whether to file appeal or not against the judgment passed by this court. In the circumstances, the instant application filed by the accused is not maintainable at this stage.*
>
> *Accordingly, this point is answered in the* ***Negative***
>
> ***O R D E R***
>
> *The application filed by the accused u/s.452 of Cr.P.C. is hereby rejected. However, liberty is granted to the accused to move the application for release of his passports after the appeal period is over."*

7. The reason so rendered on the face of it is erroneous, as the passport that are seized cannot be withheld after the acquittal of the petitioner merely because an appeal

would be filed against the said order. Therefore, an order dated 05.05.2023 stands quashed.

The concerned Court is directed to release the passports in favour of the petitioner, which are subject matter of PF.No.39/2015, forthwith.

Ordered accordingly.

Sd/-
JUDGE

JY
List No.: 1 Sl No.: 15
CT:PH