

**HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

CRIMINAL PETITION No.4978 of 2025

BETWEEN

Shri Ali Ubais

... Petitioner

And

The Senior Intelligence Officer,
Directorate of Revenue Intelligence

... Respondent

Date of Judgment Pronounced: 02.07.2025

SUBMITTED FOR APPROVAL:

THE HONOURABLE SMT. JUSTICE K. SUJANA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? (Yes/No)
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

JUSTICE K. SUJANA

*** THE HON'BLE SMT. JUSTICE K. SUJANA**

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% Dated 02.07.2025

BETWEEN

Shri Ali Ubais

... Petitioner

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**\$ The Senior Intelligence Officer,
Directorate of Revenue Intelligence**

... Respondent

! Counsel for Petitioners: Syed Ghiyasuddin

**^ Counsel for respondents: Dominic Mario Fernandes,
(Standing Counsel for Directorate
of Revenue Intelligence)**

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> HEAD NOTE:

? Cases referred

1. 2008 SCC OnLine Bom 1347
2. Criminal Writ Petition No.877 of 2024
3. (2008) 3 SCC 674
4. Special Criminal Application No.1415 of 2017
5. Crl.M.C.No.1734 of 2011
6. AIR 1958 SC 376
7. (2003) 8 SCC 50

THE HONOURABLE SMT. JUSTICE K. SUJANA**CRIMINAL PETITION No.4978 of 2025****ORDER:**

This Criminal Petition is filed seeking to quash the conditions imposed *vide* docket order dated 29.06.2024 passed in F.No.DRI.No.5 of 2024 (Comp.No.) in DRI/HZU/48D/ENQ – 25 (INT – 25)/2024, that was filed against the petitioner herein, by the respondent herein, on the file of the learned Special Judge for Trial of Cases under Economic Offences, Hyderabad i.e., seeking to direct the petitioner herein to deposit original passport bearing No.B82211252, along with original Resident Identity Card bearing Id No.784-1993-4202970-1 and to take permission from the Court before leaving the country. Thereby, by way of this petition, the petitioner herein prays this Court to direct the trial Court to return/release the original passport bearing No.B82211252 and original Resident Identity Card with I.D. No.784-1993-4202970-1, to him.

2. Heard Sri Syed Ghiyasuddin, learned counsel appearing on behalf of the petitioner as well as Sri Dominic Mario Fernandes,

learned Standing Counsel for Directorate of Revenue Intelligence appearing on behalf of the respondent.

3. Learned counsel for the petitioner submits that the petitioner was arrayed as an accused for the offence punishable under Sections 132 and 135 of the Customs Act, 1962 and was produced before the trial Court on 29.06.2024 for remand. He further submitted that the value of the alleged goods recovered from the possession of the petitioner is Rs.67,11,250/-, which is less than one crore rupees, thereby, making the offence bailable under Section 135 of the Customs Act. Accordingly, the trial Court granted bail on the same day, directing the petitioner to execute a personal bond for Rs.1,00,000/- with two sureties and imposed a condition requiring the petitioner to deposit his passport before the Court and obtain permission before leaving the country.

4. Learned counsel for the petitioner further submitted that the direction issued by the trial Court to deposit the passport and obtain prior permission to travel abroad, while granting bail in a bailable offence, is without jurisdiction and violative of the fundamental rights of the petitioner guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India and that Section 436 of the Cr.P.C. categorically confers an “absolute and unfettered right”

to be enlarged on bail in bailable offences, and once bail is granted, the Court has no discretion to impose conditions not contemplated under the statute. He further submitted that in the present case, the trial Court, while acting under Section 436 Cr.P.C., had no authority to impose additional restrictions beyond what is permitted by law, particularly in directing the deposit of the passport and restricting international travel. In support of the said contention, learned counsel for the petitioner placed reliance on the judgment of the Bombay High Court in **Sultan Kamruddin Dharani v. Union of India**¹, wherein it was categorically held that while granting bail in a bailable offence, the Court cannot impose a condition to deposit the passport or restrict travel abroad without statutory authority, as such conditions violate the statutory right under Section 436 and infringe upon personal liberty.

5. Learned counsel for the petitioner contended that the passport of the petitioner was not seized or impounded under any provision of law but was merely deposited pursuant to the directions of the trial Court and that the power to impound a passport is exclusively vested with the Passport Authority under Section 10(3) of the Passports Act, 1967, and the trial Court lacks jurisdiction to direct such impounding or conditional deposit in the

¹ 2008 SCC OnLine Bom 1347

absence of any express legal provision. He further contended that the trial Court, in its order dated 29.06.2024, recorded that the offence is bailable, and therefore, once bail was granted under Section 436 Cr.P.C., the imposition of additional conditions restricting the movement of the petitioner amounts to a violation of the right to life and liberty under Article 21 of the Constitution of India. He emphasized that liberty cannot be curtailed by executive or judicial overreach in the absence of statutory backing, and that the procedural safeguards established by law must be scrupulously followed. Therefore, he prayed the Court to quash the portion of conditions imposed in the docket order dated 29.06.2024 i.e., which directs the deposit of the passport and obtaining prior permission before leaving the country, by allowing this criminal petition.

6. In support of his submissions, learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court and various High Courts, which reads as follows:

a. In the case of Bombay High Court in **Sultan kamruddin Dharani** (supra) wherein the relevant paragraph are held as under:

19. Thus, the position of the law is that a person who is alleged to have committed a bailable offence has an

unfettered and absolute right to be enlarged on bail and the Court or the Police Officer concerned, as the case may be, has no discretion to grant or refuse bail. Subject to first proviso to Sub-section (1) of Section 436 of the Code of 1973, the Court may modulate the condition of bail as regards the bail amount and the number of sureties. However, the Court cannot impose a condition which is not a term as to the bail. The condition of requiring a person accused of a bailable offence to surrender his passport to the Court is not a term as to bail. If in such a case a condition is imposed that bail is granted subject to condition of deposit of passport, such a condition will defeat the absolute right of the accused under Section 436(1) of the said Code to be set at liberty. In the circumstances, while enlarging the Petitioner on bail in a bailable offence, the learned Magistrate has no jurisdiction to direct deposit of the passport. The Magistrate cannot impose a condition while granting bail in a bailable offence of not leaving India without the permission of the Court. Whenever the Petitioner is enlarged on bail, he is bound to attend the concerned Court on the date fixed or whenever he is called upon to do so. This obligation is created by the bail bond. If he desires to remain absent, he will have to seek an exemption from the Court. In a given case if there is an apprehension that the accused is likely to abscond, steps can also be taken under the appropriate provisions of law. Steps can be also taken for impounding the passport.

- b. In the case of **Mr. Sandeep v. State of Maharashtra**², wherein in paragraph No.14, it is held as follows:

² Criminal Writ Petition No.877 of 2024

“There is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment. Whereas, “impounding” is to take possession of a document or a thing for being held in custody in accordance with the law. Learned counsel for the petitioner has placed reliance on the decision in the case of Praveen Surendran *supra*. The said aspect was extensively dealt with by the Karnataka High Court by referring provisions under Sections 102 and 104 of the Code and 10 of the Passports Act and it is held that the Passports Act is special enactment and it is trite that it being special enactment would prevail over Section 102 or Section 104 of the Code which empowers 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, deposit of the Passport before the court or before the police both will become without authority of law.

15. This aspect is further considered by the Hon'ble Apex Court in the case of Chennupati Kranthi Kumar vs. State of A.P.² wherein it is held that a relevant decision of this Court on the issue involved is in the case of Suresh Nanda vs. CBI³. In the said decision, it was held that the power under Section 104 of the Code cannot be invoked to impound a Passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding Passports shall prevail over Section 104 of the Code. Moreover, it was held that under Section 102(1) of the Code, the Police have the power to seize the Passport but there is no power to impound the same. It was held that even if the power of seizure of a Passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the Passport

Authority to decide whether the Passport needs to be impounded.”

c. In the case of **Suresh Nanda v. C.B.I**³, wherein in the relevant paragraphs, it is held 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 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

³ (2008) 3 SCC 674

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]).”

7. On the other hand, learned Standing Counsel appearing for the respondent filed counter opposing the submissions made by the learned counsel for the petitioner stating that the petitioner was apprehended red-handed while attempting to smuggle USD 81,250, concealed in a specially modified trolley bag, at Rajiv Gandhi International Airport, Hyderabad. The seizure was lawfully conducted in the presence of independent witnesses and recorded through a detailed Panchanama. He further submitted that the petitioner voluntarily gave a statement under Section 108 of the Customs Act, 1962, wherein he admitted to the commission of the offence and revealed that he was acting as part of an organized network involved in foreign currency smuggling. Therefore, the allegation of the petitioner that the case is fabricated and false is wholly devoid of merit and contrary to the material on record.

8. Learned Standing Counsel further submitted that the conditions imposed by the trial Court at the time of granting bail, specifically, the deposit of the passport and the requirement to seek permission before leaving the country, are justified and within the legal competence of the Court. The passport was not impounded but voluntarily deposited by the petitioner at the time of remand, and the condition was imposed considering the serious nature of the offence, the international travel history of the petitioner, and the potential risk of absconding. In support of his submission, he placed reliance on the judgment of the Gujarat High Court in **Jivrajbhai Ramjibhai Patel v. State of Gujarat**⁴, wherein it was held that reasonable conditions may be imposed even in bailable offences if such conditions are necessary to secure the presence of the accused. Specifically, in paragraph 18, the Court held:

“From the above settled law, it is clear that when a person is charged with bailable offences and when he is released on bail, the Court has no discretion in granting bail and no condition can be imposed. On the facts of the case, it is clear that after filing of the charge sheet, all the offences are bailable offences. On the facts of the case, it is clear that the alleged offences are bailable, and therefore, the conditions imposed by this Court earlier require to be deleted in view of change of circumstances.”

⁴ Special Criminal Application No.1415 of 2017

9. Learned Standing Counsel contended that the petitioner has filed multiple and inconsistent applications seeking interim custody of his passport, all of which have been dismissed by the trial Court on various occasions i.e., 05.08.2024, 05.09.2024, and 05.02.2025, due to his failure to produce any proof of foreign employment or business necessity. The petitioner has shifted his grounds in each application, initially seeking permission to travel for two years, then for six months, and now for 90 days, which demonstrates a lack of bona fides and casts serious doubt on the credibility of his claims. Moreover, no change in circumstances has been shown to warrant reconsideration of the earlier orders.

10. Learned Standing Counsel further contended that the judgments relied upon by the petitioner are factually distinguishable and inapplicable to the present case. The decision of the Bombay High Court in **Sultan Kamruddin Dharani v. Union of India** dealt with a commercial import infraction and an application for compounding under Section 137(2) of the Customs Act, and not with foreign currency smuggling involving physical concealment and cross-border movement. Similarly, the ruling of the Kerala High Court in **Muhammed Navas Mohamood v. SHO** pertains to an NDPS case and bears no relevance to Customs offences involving travel restrictions or passport deposit conditions.

11. He further contended that the continuation of the bail conditions is justified in light of the foreign connections of the petitioner, the pending adjudication under Section 124 of the Customs Act, and the serious economic implications of the offence and that this Court in **Zia Unnisa Nasreen v. Senior Intelligence Officer** has upheld similar restrictions in smuggling cases, recognizing that economic offences may warrant reasonable curtailment of movement to protect the integrity of the judicial process. Therefore, there is no illegality in the order of the trial Court and the trial Court has rightly passed the impugned order, as such, he prayed the Court to dismiss the criminal petition.

12. In support of his submissions, learned Standing Counsel relied upon the Judgment of the Kerala High Court in **A.V. Mohammed Rafeek v. The Union of India**⁵, wherein in paragraph No.8, it is held as follows:

“8. The Supreme Court in Suresh Nanda's case (supra) was not considering the power of criminal court to direct a person accused or suspected of commission of a non cognizable offence while he is released on bail to surrender his passport in court to ensure his presence at the investigation, enquiry or trial of the case. Instead, the Supreme Court was only considering the scope and ambit of Sec.104 of the Code which said;

⁵ Crl.M.C.No.1734 of 2011

“Any court may, it is thinks fit, impound any document or thing produced before it” under the code.

The power under Sec.104 of the Code could be exercised only with respect to a document produced before the court and not, regarding a document not produced before it. In Wharton's Law Lexicon, the word “impound” is given the meaning, “to place in the custody of the law”. Per Oxford Dictionary the word means “to take legal or formal possession of”. In Suresh Nanda's case the Supreme Court considered the distinction between “seizing” and “impounding” and held that impounding is of the document which is seized. It was held that after enactment of the Act which is a special Act, a passport seized (by the CBI in that case) could be impounded only under Sec.10(3) of the Act and that so far as Sec.104 of the Code is concerned to the extent it related to documents coming under Sec.10(3) of the Act, the maxim, 'generalia specialibus non derogant' applied. In that case the officials of the CBI conducted a search and seized the passport of appellant. That document was retained by the CBI. Appellant moved the court of Special Judge to release the passport. The Special Judge allowed the application. That order was set aside by the High Court in revision. The Supreme Court set aside the order of the High Court on the principle above stated. Suresh Nanda was not a case of the criminal court imposing a condition while granting bail in a non bailable offence to surrender the passport. The Supreme Court was not considering the power of criminal court in view of Sec.10(3) of the Act, to impose a condition to surrender the passport while granting bail in a non bailable offence. Instead, that question was left open as is clear from the observation in paragraph 20 (of Suresh Nanda's case) that :

“We, however, make it clear that we are not expressing any opinion on the merit of the case and are not deciding whether the passport can be impounded as condition for the grant of bail”.

13. In the light of the submissions made by both the learned counsel and a perusal of the material available on record, the primary issue that arises for consideration in the present criminal petition is whether the trial Court, while granting bail in a bailable offence, was justified in imposing conditions requiring the deposit of the passport of the petitioner and mandating prior permission before travelling abroad, and whether such conditions are sustainable in law.

14. It is not in dispute that the offence alleged against the petitioner falls under Section 135 of the Customs Act, 1962, and the value of the seized foreign currency was Rs.67,11,250/-, which is less than one crore rupees, thereby making the offence bailable in nature. The trial Court, while acknowledging the bailable nature of the offence, granted bail under Section 436 of Cr.P.C., but also directed the petitioner to deposit his passport and obtain prior permission from the Court before leaving the country. At this stage, it is pertinent to note Section 436 of Cr.P.C., which reads as follows:

“436. In what cases bail to be taken.

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit,

[may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] [Substituted by Act 25 of 2005, Section 35, for "may, instead of taking bail" (w.e.f. 23-6-2006).] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this Section shall be deemed to affect the provisions of sub-Section (3) of Section 116 [or section 446-A] [Inserted by Act 63 of 1980, Section 4 (w.e.f. 23-9-1980).].

[Explanation.-Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.] [Inserted by Act 25 of 2005, Section 35 (w.e.f. 23-6-2006).]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of

Section 116, [or Section 446-A.] [Inserted by Act 63 of 1980, Section 4, w.e.f. 23.9.1980.]

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446.

[436-A. Maximum period for which an under trial prisoner can be detained. - Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this Section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.] [Inserted by Act 25 of 2005, Section 36 (w.e.f. 23-6-2006).]

[Substituted by Act 45 of 1978, Section 28, for "has been passed" (w.e.f. 18.12.1978).]"

15. As seen from the above, Section 436(1) Cr.P.C. stipulates that when a person/accused of a bailable offence is arrested or detained without any warrant and is prepared to furnish bail, he shall be released on bail. The language of the provision is mandatory and confers an absolute and indefeasible right to bail. The only discretion vested in the Court pertains to the amount of the bond or number of sureties; it does not extend to placing restrictions on personal liberty, such as confiscating or directing the deposit of a passport or imposing travel restrictions.

16. This statutory mandate was examined in depth by the Bombay High Court in **Sultan Kamruddin Dharani** (cited supra), wherein it was held that the Court cannot impose any conditions while enlarging a person on bail in a bailable offence which is not directly related to securing his appearance before the Court. In paragraph 19 of the judgment, the Court held that requiring the accused to surrender his passport or to seek permission before

leaving India constitutes a restriction on liberty that defeats the absolute right to be set at liberty under Section 436(1). Such a condition is not a term as to bail, and hence ultra vires.

17. The Hon'ble Supreme Court in **Suresh Nanda** (cited supra), laid down the principle that impounding of a passport is a function exclusively conferred on the Passport Authority under Section 10(3) of the Passports Act, 1967, and cannot be assumed or exercised by a criminal Court under Section 104 of Cr.P.C. The Court clarified the legal distinction between seizing and impounding, holding that impounding implies retention for a continuing period and that such retention cannot be done by Courts or police authorities without complying with the procedure established under the Passports Act.

18. Thus, the power to impound or retain a passport lies solely with the Passport Authority, and not with the criminal Courts, even if the passport is produced before them during proceedings. In the present case, it is not the case of the prosecution that any steps have been initiated under the Passports Act for impounding the passport of the petitioner. Instead, the trial Court imposed a blanket restriction through a bail condition, thereby exceeding its

jurisdiction and infringing upon the personal liberty of the petitioner.

19. The Hon'ble Supreme Court in **Talab Haji Hussain v. Madhukar Purshottam Mondkar**⁶, and later in **State of Gujarat v. Salimbhai Abdulgaffar Shaikh**⁷, reiterated that when the statute confers a right to bail in a bailable offence, no discretion vests with the Magistrate to refuse bail or to impose additional restrictions that are not statutorily prescribed.

20. Further, this Court notes that the trial Court imposed the said condition without recording any finding of flight risk or abscondence, and without invoking any provision of law authorizing the imposition of such terms. Even if such apprehensions existed, there are specific mechanisms available under law, such as:

- Section 439(2) Cr.P.C. – for cancellation of bail;
- Section 10(3)(e) of the Passports Act – for impounding by the Passport Authority;

⁶ AIR 1958 SC 376

⁷ (2003) 8 SCC 50

The trial Court, however, did not resort to any of these, and instead attempted to indirectly achieve what the law does not permit directly.

21. In the present case, the conditions were imposed at the time of granting bail by the trial Court, wherein the petitioner was directed to deposit his passport and were restricted from travelling abroad. However, the observations made in the judgment in **Jivrajbhai Ramjibhai Patel** (cited supra) relied upon by the respondent pertain to situations arising during the course of trial, where, if the prosecution genuinely apprehends that the petitioner may not attend the Court proceedings, it may approach the trial Court seeking appropriate directions. In contrast, at the initial stage of grant of bail in a bailable offence, as per the settled principles of law, the trial Court cannot impose such restrictive conditions.

22. While the concern of securing the presence of the accused during trial is legitimate, it cannot override a statutory right nor authorize judicial overreach. The Court is bound by the constitutional guarantee under Article 21, which mandates that liberty can be curtailed only in accordance with procedure established by law. Imposing extra-statutory conditions in a

bailable case, where no statutory discretion exists, is clearly a violation of that mandate.

23. Additionally, the assertion of the learned Standing Counsel that the passport was voluntarily deposited does not withstand scrutiny. Once a direction is issued by the Court requiring the deposit of a document, the voluntary nature of the act is extinguished, and the deposit assumes a compulsory and binding character, thus amounting to a judicial restraint.

24. The appearance of the petitioner can be sufficiently ensured through the bond executed under Section 441 Cr.P.C., which mandates attendance before the Court as and when required. If there is any violation, remedial measures are available in law, including issuance of non-bailable warrants, cancellation of bail, and initiation of proceedings under Section 174 IPC for non-attendance.

25. In the absence of any statutory foundation, this Court is of the firm view that the conditions imposed by the trial Court in its docket order dated 29.06.2024 are unsustainable in law, amount to an arbitrary curtailment of the liberty of the petitioner, and are therefore liable to be quashed.

26. Accordingly, this Criminal Petition is allowed setting aside the docket order dated 29.06.2024 passed in F.No.DRI.No.5 of 2024 (Comp.No.) in DRI/HZU/48D/ENQ – 25 (INT – 25)/2024 by the learned Special Judge for Trial of Cases under Economic Offences, Hyderabad.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE K. SUJANA

Date: 02.07.2025

Note: L.R. copy to be marked

B/o

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