

**Pawan Kumar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Feb-16-2000

**Reported in :** 2000CriLJ4325; I(2001)DMC560; 2000WLC(Raj)UC512

**Judge :** S.C. Mital, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

**Appeal No. :** Criminal Misc. Petition No. 69 of 2000

**Appellant :** Pawan Kumar

**Respondent :** State of Rajasthan

**Advocate for Def. :** Ramesh Purohit, P.P.

**Advocate for Pet/Ap. :** Mridul Jain, Adv.

**Disposition :** Petition allowed

**Judgement :**

**S.C. Mital, J.**

1. This petition under Section 482, Cr.P.C. is directed against the order dated 3.1.2000 passed by learned Sessions Judge, Banswara in Sessions Case No. 134/97 whereby the application made by the petitioner to give him back his

passport impounded by the Court has been rejected. The facts giving rise to this petition may be noted as under.

2. A case under Sections 304-B and 498-A, I.P.C. was registered against the petitioner and his mother Smt. Bhagwati and after usual investigation a challan was submitted in the Sessions Court against Smt. Bhagwati and the investigation against the petitioner was kept pending under Section 173(8), Cr.P.C. because the petitioner was in Kuwait. The allegation was to this effect against the petitioner that he used to make allegations on the character of the deceased wife on phone. The petitioner was also arrested when he came to India and charge-sheet has also been laid against him for which a Sessions Case No. 134/97 is pending in the Court of Sessions Judge, Banswara. The petitioner was enlarged on bail by order dated 20.12.1999 on furnishing bond in the sum of Rs. 20,000/- and two sureties in the sum of Rs. 10,000/- each to the satisfaction of the learned Trial Court and also with the direction that the petitioner shall surrender his passport before the Trial Court which shall remain in the Court till the disposal of the case. The petitioner, thereafter, moved an application to give him back his passport because the Visa period is expiring on 21.2.2000. The petitioner submitted that he wants to go back to Kuwait to join his service and if the passport is not returned to him, the period of Visa will expire and he will not be able to go to Kuwait and his services shall stand terminated. The learned Trial Court after hearing the parties dismissed the application on the ground that this Court ordered to surrender the passport and it will be kept till the disposal of the case. Hence the petitioner has come up in this petition under Section 482, Cr.P.C.

3. I have heard the learned Counsel for the petitioner and the learned Public Prosecutor and also perused the judgment Shanker Lal v. Smt. Ansumala and State, 1995 Cr. LR 410, cited on behalf of the petitioner. It is contended that the last date of the Visa is 21.2.2000. If the petitioner does not go back to Kuwait before this date, he will lose his services. It is submitted that the date of the Visa has not been extended by the Embassy. The petitioner is prepared to give written undertaking that he will appear before the Court for recording his plea under Section 313, Cr.P.C. and also on the date of the pronouncement of the judgment. The learned Counsel also further argued that the trial against his mother Smt.

Bhagwati has ended in acquittal and in the case against the petitioner six witnesses have been examined who have not supported the prosecution case. In these facts and circumstances of the case, it is urged that the petitioner may be allowed to go to Kuwait and his passport may be given to him. The learned Public Prosecutor has vehemently opposed the contention that this Court has imposed a condition that the passport shall remain in the Court till disposal of the case and if the petitioner is allowed to go to Kuwait then there is every reasonable probability that he may not appear before the Trial Court and the trial of the case is likely to suffer.

4. I have heard the rival contentions. In *Shanker Lal v. Smt. Ansumala and State* (supra), in the similar facts and circumstances, this Court took the view that a person cannot be deprived of his livelihood by seizing his passport, merely because he is involved in a criminal case and in the facts and circumstances of that case, this Court came to the conclusion of that case, that the impugned order was a bit harsh and amounted to the abuse of the process of the Court. Therefore, passport was handed over to the petitioner on certain conditions mentioned in the aforesaid judgment. I am of the view that the learned Counsel for the petitioner gets support from this case. I am also of the view that in the facts and circumstances of the instant case also, the passport should be released to him as the petitioner was serving in Kuwait even before the charge-sheet was submitted against him and now wants to return to Kuwait to join his services. He remained in India and attended the Court on each and every date of hearing of the case and now the period of Visa is going to expire on 21.2.2000; the petitioner is faced with the situation that he will lose service depriving him of livelihood if he does not go back to Kuwait which is not possible without getting back the passport. The learned Trial Court has not considered this hardship and very material aspect of the case. In this view of the matter, I am of the opinion that the impugned order deserves to be set aside.

5. I, therefore, allow this petition and set aside the impugned order dated 3.1.2000, and order that if the petitioner Pawan Kumar deposits fixed deposit receipt for an amount of Rs. twenty five thousand issued by any nationalised Bank in his favour and pledges the same in favour of learned Sessions Judge, Banswara and gives a

written undertaking that he shall appear in person before the Trial Court at the time of recording his plea under Section 313, Cr.P.C. and on the date of pronouncement of the judgment in Sessions Case No. 134/97, State v. Pawan Kumar, then his passport issued by the Government of India be handed over to him, after keeping a photostat copy thereof. It is made clear that if the petitioner fails to appear before the Trial Court on the date for recording his plea under Section 313, Cr.P.C. and also on the date of pronouncement of the judgment then the fixed deposit shall stand forfeited in favour of the State in addition to the proceedings to be initiated against him under Section 446, Cr.P.C.

6. A copy of this order be sent to the learned Sessions Judge, Banswara for information and compliance.

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