

Court No. - 40

Case :- WRIT - C No. - 32672 of 2023

Petitioner :- Savarun Nisha

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Vishal Agarwal

Counsel for Respondent :- A.S.G.I., Seema Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Ms. Seema Singh, learned Standing Counsel for the respondent-Union of India.

2. The present writ petition has been preferred by the petitioner for the following reliefs:-

"(i) A writ, order or direction in the nature of mandamus commanding the respondent no.2 to forthwith grant No Objection Certificate to the husband of the petitioner so the husband of petitioner who is presently at Damam, Riyadh, Saudi Arabia be permitted to return to India.

(ii) A writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 to forthwith look into the matter and decide the representation of the wife of the petitioner dated 10.9.2023, expeditiously in accordance with law."

3. The facts in brief of the present case are that in December 2020, petitioner's husband namely, Abdul Munaf Ansari went to Saudi Arabia, Riyadh, Damam after obtaining valid passport having No.K9728582 and Visa no.162902278, which was valid till 6.7.2023, for doing job. As per petitioner, visa granted to her husband was for three months, however, when he reached Saudi Arabia, he was given Iqma No.2101312045, which was valid till 16.8.2023 and presently it had expired. As the Iqma was expiring, petitioner's husband applied for its extension before the Passport Office at Saudi Arabia and the Indian Embassy at Riyadh stated that there is court case against the petitioner's husband, therefore, court order is required to issue passport to him. Petitioner's husband was unaware about pendency of criminal case against him and on enquiry by the petitioner, they came to know that an FIR under sections 441 and 447 IPC has been registered on 10.9.2019 against the petitioner and various other villagers regarding illegal encroachment over public property in which name of petitioner's husband is at serial no.10.

4. In this backdrop learned counsel for the petitioner submits that when the

petitioner had gone to Saudi Arabia in December 2020, the FIR was already registered against him but permission was granted to him to go abroad by Indian Embassy, New Delhi. Now, when the petitioner's husband want to returned back, the objection is taken that criminal case is pending against him. He further submits that respondents are sitting tight over the petitioner's application for granting No Objection Certificate to her husband without any valid reason. In this backdrop, learned counsel for the petitioner vehemently contended that neither he was convicted in any case till date nor he is having any criminal history except the aforesaid case. He lastly submits that it is settled law by Hon'ble Apex Court as well as by this Court that the passport cannot be denied merely on the basis of criminal case. In support of his submissions, he has placed reliance upon the judgment and order passed by this Court in **Basoo Yadav V/s. Union of India and 4 others (Writ-C No. 29605 of 2022, dt. 16.12.2022)** and as such, it is sought to be contended that the present matter is squarely covered by the aforesaid judgment and the similar treatment may also be extended to the petitioner. For ready reference, the operative portion of the order dated 16.12.2022 is reproduced herein below:-

"Having heard learned counsel for the petitioner and learned Standing Counsel and after having gone through the instructions which have been sent by the Director General of Police, the Court is definitely of the view that no non-cognizable report which was registered could be taken into cognizance if no investigation was ordered by the concerned Magistrate. Even though in the instant case, whether the passport can be refused on the basis of the pendency of the criminal case is not the question involved, we are of the view that even during the pendency of any criminal case, passport could be issued/renewed as per the Government Order dated 25.8.1993 if the Court passes orders for that purpose. In the instant case, we do find that the application of the petitioner was rejected on the basis of the two reports of non-cognizable cases namely NCR No.111/2012 and NCR No.114/2018. The Director General of Police has also given his view that the reports with regard to the non-cognizable cases could not be made the basis for rejecting an application for issuance of passport if they had not been investigated into.

Under such circumstances, we issue the following directions :-

- (1) The passport form of the petitioner for the issuance of a passport be considered within a period of two weeks from the date of presentation of a certified copy of this order before the respondent no.2-Regional Passport Officer, Regional Passport Office, Vipin Khand, Gomti Nagar, Lucknow;
- (2) Since we are finding that in quite a few cases the reports of non-cognizable cases in which the concerned Magistrate had not even ordered for investigation were being taken into account for rejection of passport, we issue a direction to the Director General of Police to instruct his officers to give a report with regard to the pendency of reports in non-cognizable cases after appropriate and proper application of mind;
- (3) Outright the passport applications be not rejected under section 6(2)(f) of the Passports Act if orders of the Court, where the criminal case is

pending, have been passed as per the Government Order dated 25.8.1993.
The Director General of Police to issue notification in this regard also.

With these observations, the writ petition is, accordingly, allowed."

5. Learned counsel for the petitioner has further placed reliance upon order dated 27.09.2021 passed by Hon'ble Apex Court in **Vangala Kasturi Rangacharyulu V/s. Central Bureau of Investigation (IA 52346/2021 in Criminal Appeal No(s). 1343/2017)**, wherein, Hon'ble Apex Court held that the passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal. For ready reference, the operative portion of the order dated 27.09.2021 is reproduced herein below:-

"The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately proceeding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal court.

Admittedly, at present, the conviction of the appellant stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of."

6. The above said argument of learned counsel for the petitioner is not being disputed by learned Standing Counsel for the Union of India.

7. We have occasion to peruse the record in question as well as the judgments cited above. In the facts and circumstances of the case, we are of the considered opinion that the claim of the petitioner must be processed in the light of the observation made by the Apex Court in the above noted judgement as well as in the light of the judgment in **Basoo Yadav(supra)** within six weeks from the date of production of a certified copy of this order.

8. The writ petition stands disposed of accordingly.

Order Date :- 12.10.2023

Manish Himwan