

Court No. - 40

Case :- WRIT - C No. - 37055 of 2023

Petitioner :- Hanzala

Respondent :- Union Of India And Anothers

Counsel for Petitioner :- Bharti Mishra

Counsel for Respondent :- A.S.G.I.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard learned counsel for the petitioner, Sri Amrish Sahai, learned Standing Counsel for Union of India and Shri Amrish Shukla, learned Additional Chief Standing Counsel for the State respondent.

2. By means of the instant writ petition, petitioner has prayed for following principal reliefs:

“(i) issue a writ, order or direction in the nature of Mandamus directing the Respondent Authorities to issue the passport in favour of petitioner in pursuance of the Application Reference No. 22-0017764342 dated 29.11.2022.

(ii) issue a writ, order or direction in the nature of Mandamus commanding the Respondent Authorities to take appropriate decision for issuance of the passport in favour of the petitioner in pursuance of the Application Reference No. 22-0017764342 dated 29.11.2022.”

3. Learned counsel for the petitioner submits that even though the petitioner has moved an application for issuance of passport as per the Passport Act but till date merely on account of registration of Non-Cognizable Report (NCR) No. 0159 of 2020 under Sections 323, 504 IPC, Police Station Kerakat, District Jaunpur application has not been processed. He submits that as per provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."), if there is no order of any Magistrate for investigation under Section 155 (1) Cr.P.C. then no police officer could investigate a non-cognizable case. He further submits that the NCR is of year 2020 and as per Section 468 Cr.P.C., if cognizance of the case could not be taken within limited period then the report

of the non-cognizable case would be worthless document. 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, dated 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."

4. 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."

5. The above said argument of learned counsel for the petitioner is not being disputed by learned Standing Counsel for the Union of India as well as learned Additional Chief Standing Counsel for the State.

6. 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.

7. With these observations, the writ petition is disposed of.

Order Date :- 28.10.2023

Puspendra