Court No. - 40

Case :- WRIT - C No. - 38647 of 2023
Petitioner :- Vishal Sharma
Respondent :- Union Of India And 4 Others
Counsel for Petitioner :- Subhash Chandra Maurya,Sharda Prasad Mishra
Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner; Sri Rahul Anand Gaur, learned counsel for the respondent nos.1 and 2 and learned Standing Counsel for the State respondent nos.3 to 5.

2. The present writ petition has been preferred for a mandamus directing the respondents to decide the application dated 20.10.2023 and re-issue the passport of the petitioner within stipulated time.

3. The record in question reflects that the petitioner is working as Ordinary Shipman in Merchant Navi. The petitioner applied for and was issued a passport on 10.05.2021, which was valid till 09.05.2031. The petitioner went on leave to visit his home town and during the leave period, he lost his passport on 25.08.2023. Hence the petitioner has applied for re-issuance of the passport on 20.09.2023. During police verification, the respondent no.2 has raised an objection over the application of the petitioner on the ground that the petitioner is involved in Case Crime No.227 of 2021 under Sections 147, 148, 149, 452, 323, 504, 506 and 324 IPC, P.S. Ahmadgarh, District Bulandshahr in which the Investigating Officer has submitted chrgesheet on 30.11.2021 and learned Magistrate has taken cognizance on the chargesheet on 25.01.2022. In this backdrop, it has been averred by the petitioner that neither he is convicted in any case till date nor he is having any criminal history except the aforesaid case. It has also been averred that the issue of renewal of passport (while the criminal case is pending against the applicant) has been considered by this Court in Writ C No. 8621 of 2022 (**Shiv Shankar vs. Union of India**) decided on 3.12.2022, in which, it has been held that the appropriate course, which legally is available to the applicant is to approach the court concerned and seek an order permitting the applicant to depart from India. For ready reference, the operative portion of the order dated 3.12.2022 is reproduced herein below.

"8. We have considered the aforesaid submissions of learned counsel for the petitioner. We have also heard Sri Varun Pandey, learned counsel representing the respondents, who has vehemently opposed the prayer of the petitioner and has submitted that in terms of the provisions contained in Section 6(2)(f) of the Passport Act 1967, the passport authority is bound to refuse to issue the passport under Section 5(2)(c) of the Passport Act,

1967 in this case for the reason that pendency of criminal proceedings is one of the grounds enumerated in Section 6(2)(f) of the Act of 1967 to deny issuance of passport.

9. Section 6 (2)(f) of the 1967 Act provides that the passport authority shall refuse to issue the passport in various conditions including a situation where proceedings in respect of an offence, alleged to have been committed by the person seeking passport, are pending before criminal court in India. It is undeniable in this case that after lodging of the First Information Report bearing No.0576 of 2020, the charge sheet has also been submitted before the Court concerned by the Investigating Officer, as has been communicated to the petitioner by the letter dated 29.09.2022, which was communicated to the petitioner by the Indian Embassy at Kuwait.

10. Having regard to the provisions contained in Section 6 (2)(f) of the 1967 Act, unless the criminal proceedings are concluded, the passport authority is bound to refuse issuance of the passport, however to meet such exigencies where some frivolous or unsustainable criminal cases are pending, Government of India has issued a Circular dated 10.10.2019. The said circular has been issued in furtherance of an earlier Circular published vide Notification No.GSR 570 (E), dated 25.08.1993. The said circulars dated 10.10.2019 and 25.08.1993 have been issued by the Ministry of Foreign Affairs, Government of India, in exercise of its powers conferred under Section 22 of the Passport Act, 1967 and hence they are statutory in nature and accordingly are binding on all concerned.

11. We may also notice that Office Memorandum dated 10.10.2019 has been issued in reference to the provisions contained in Section 6 (2)(f) of the Passport Act, 1967. As per the Office Memorandum dated 10.10.2019, GSR 570 (E), dated 25.08.1993 exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before the criminal court in India if they produce orders from the court concerned permitting them to depart from India, from operation of the provisions of Section 6 (2)(f) of the 1967 Act. Clause 5 (i) of the Office Memorandum dated 10.10.2019 clearly provides that the provisions of GSR 570 (E) may be strictly applied in all cases, which also clarifies that GSR 570 (E) is a statutory notification and hence it forms part of the Rules.

12. In view of the aforesaid, what we notice is that the Government of India has been conscious of a situation where certain frivolous criminal complaints or cases are lodged against the persons seeking passport and accordingly, has evolved a complete mechanism by issuing Office Memorandum dated 10.10.2019 and Office Memorandum dated 25.08.1993 (GSR 570 (E)). When we examine the facts of the present case, what we find is that the First Information Report has been lodged by the real sister of the applicant and the contents thereof also reflect that the same was lodged in relation to some not so serious family dispute.

13. In view of the aforesaid, denying the petitioner passport only on account of pendency of the aforesaid criminal case does not appear to be equitable. However in terms of the provisions contained in the Office Memorandum issued by the Government of India in the Ministry of External Affairs, dated 10.10.2019 and 25.08.1993, the petitioner will have to seek an order from the court where the charge sheet in relation to the F.I.R. No. 0576 of 2020, P.S. Kotwali, Unnao is pending.

14. Accordingly, the appropriate course which legally is available to the petitioner is to approach the court concerned and seek an order permitting

the petitioner to depart from India.

15. However, learned counsel for the petitioner has submitted that the petitioner is presently in Kuwait in connection with his employment and it will be very difficult for him to travel all along from Kuwait to Unnao to seek requisite orders.

16. In view of the aforesaid facts, we permit that application for seeking the requisite order from the Court where the charge sheet in relation to the F.I.R. No.0576 of 2020, P.S. Kotwali, Unnao under Section 452, 323, 504 and 506 is pending, shall be moved through a counsel, who may represent the petitioner. Affidavits and other requisite pleading may be filed by his wife or any other close relative. In case any such application is preferred by the petitioner, the Court concerned shall consider the same and take appropriate decision in accordance with law considering the provisions contained in Office Memorandums dated 10.10.2019 and 25.08.1993 issued by the Government of India in the Ministry of External Affairs.

17. The decision by the court concerned shall be taken within 10 days from the date any such application is made by the petitioner through his counsel before the Court concerned.

18. Once any such order is passed by the Court concerned, the case of the petitioner for renewal/ re-issue of passport shall be considered and appropriate decision shall be taken by the competent authority within next ten days.

19. With the aforesaid observations and directions, the writ petition is finally disposed of."

4. Considering the facts and circumstances, we deem it appropriate to permit the petitioner to approach the competent Criminal Court to seek permission. In case any such application is moved within two weeks from today, the same would be considered and decided by the Court concerned, thereafter, the petitioner would be at liberty to press the application for issuing passport before the Passport Authority, which would also be addressed expeditiously in accordance with law.

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

Order Date :- 8.11.2023
RKP

Digitally signed by :-
RAKESH KUMAR PATEL
High Court of Judicature at Allahabad