

Court No. - 40

Case :- WRIT - C No. - 38856 of 2023

Petitioner :- Anil Kumar

Respondent :- Union Of India And Another

Counsel for Petitioner :- Vinod Kumar Pandey

Counsel for Respondent :- A.S.G.I., Vivek Tripathi

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri Vinod Kumar Pandey, learned counsel for the petitioner and Shri Vivek Tripathi, learned counsel appearing on behalf of Union of India.

2. The present writ petition is preferred for quashing the order impugned dated 27.02.2020 passed by the respondent no. 2, whereby the petitioner's application for renewal of passport application was rejected.

3. Brief facts emerging from the record is that earlier the petitioner had preferred Writ C No.1329 of 2020, (Anil Kumar vs. Union of India & Another) for a direction commanding respondent to process the passport application No. GZ1073723671419 dated 24.05.2019. The same was entertained and disposed of with following observations:-

"In connection with the petitioner's passport, show cause notices dated 20.7.2019 and 7.10.2019 were issued to the petitioner on the same grounds which the petitioner had replied but till date no order has been passed and the petitioner is not being allowed to leave the country on the ground that his passport stands impounded.

The argument is that in pursuance to the show cause notice, no order has been passed either cancelling the passport or impounding the same and without producing the order of impounding the passport, the respondents cannot stop the petitioner to go to Dubai where he is having business and visits regularly.

Sri Vineet Srivastava, learned Counsel for the respondents submits that since no order pursuant to the show cause notice has been passed so far, the Court may permit the respondent no.2, to pass an order in that regard.

In view of the aforesaid facts and circumstances, we dispose of the writ petition with the direction to the respondent no.2 to pass an appropriate order pursuant to the show cause notices dated 20.7.2019 and 7.10.2019 after considering the response of the petitioner in accordance with law most expeditiously, preferably within a period of one month from the date a copy of this order is produced before him.

With the aforesaid observations, the writ petition stands disposed of."

4. Consequently, the show cause notice was given by the respondents indicating therein that on account of adverse police verification report, the application could not be processed.

5. In support of his submission, learned counsel for the petitioner has placed reliance on the order dated 22.01.2019 passed in Application Under 482 Cr.P.C. No.1216 of 2019 (Anil Kumar vs. State of U.P. and another), wherein, learned Single Judge has stayed the further proceeding of the Case Crime No.28063 of 2018 arising out of Case Crime No.1901 of 2017 under Sections 420, 406, 467, 468, 471, 120-B IPC, P.S. Indirapuram, District Ghaziabad. He submits that in view of the aforesaid facts and circumstances, the order impugned cannot sustain as the court proceeding has already stayed by the learned Single Judge. On account of non renewal of the passport, the petitioner is suffering irreparable loss as he has to visit Dubai frequently where he is having business and visits regularly.

6. Per contra, Shri Vivek Tripathi, learned counsel for Union of India opposed the writ petition and relied upon the MEA's Notification vide No. GSR 570(E) dated 25.08.1993, wherein, it is clarified that the Citizen 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, passport facility cannot be rendered to them under Section 6(2)(f)/10(3)(e) of the Passport Act, 1967 unless they produce order from the Court concerned permitting them to depart from India. He further submits that no doubt learned Single Judge vide an order dated 22.01.2019 has stayed the aforesaid criminal proceeding but nothing is brought on record to indicate that the interim order was ever extended by the learned Single Judge and even the said order would not help the petitioner in view of Apex Court judgement in ***Asian Resurfacing of Road Agency vs. Central Bureau of Investigation 2018 (16) SCC 299***, which still holds the field. He fairly states that he has to get leave to go abroad from the Competent Court and only thereafter the application of the petitioner can be processed. He has placed reliance on the judgement passed by the Division Bench in ***Writ C No. 8621 of 2022 (Shiv Shankar vs. Union of India)*** decided on 3.12.2022 and submits 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.

7. Confronted with this situation, learned counsel for the petitioner submits that leave may be accorded to the petitioner to approach the Competent Criminal Court seeking permission so that

application of the petitioner may be considered.

8. 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 three 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 renewal of passport before the Passport Authority, which would also be addressed expeditiously in accordance with law.

9. With these observations, the writ petition is ***disposed of***.

Order Date :- 5.12.2023

Vijay