

Court No. - 32

Case :- WRIT - C No. - 41041 of 2023

Petitioner :- Durgesh Pandey

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ravi Kant Shukla

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

Hon'ble Salil Kumar Rai,J.

Hon'ble Surendra Singh-I,J.

Heard the counsel for the parties.

The present petition has been filed praying for a mandamus commanding the respondent no. 3, i.e., Regional Passport Officer, Passport Bhawan, Vipin Khand, Gomti Nagar, Lucknow to complete the process of issuance of passport to the petitioner.

It appears from the records annexed with the writ petition that no orders are being passed on the application of the petitioner because of the pendency of Complaint Case No. 5046 of 2020 before the Additional Chief Judicial Magistrate, Deoria and also because an N.C.R. No. 63/2020 under Sections 323, 504 IPC was registered against the petitioner on 31.12.2020.

In view of the aforesaid, there is no illegality in the act of the passport department in not issuing the passport of the petitioner under clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967 because of the pendency of Complaint Case No. 5046 of 2020. However, in view of the office memorandum dated 10th October, 2019, No.VI/401/1/5/2019 which provides that the persons against whom criminal cases are pending may be exempted from the operation of Section 6 (2) (f) of the Act, 1967, in case, they produce orders from the court concerned permitting them to depart from India subject to the conditions enumerated in GSR 570 (E) dated 25.08.1993.

So far as the registration of N.C.R. No. 63 of 2020 is concerned, this Court in its order dated 16.12.2022 passed in ***Basoo Yadav V/s. Union of India and 4 others*** (Writ-C No. 29605 of 2022, dated 16.12.2022) held as follows:-

"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."

Further, the Supreme Court in ***Vangala Kasturi Rangacharyulu V/s. Central Bureau of Investigation*** (IA 52346/2021 in Criminal Appeal No(s). 1343/2017), 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."

The petitioner may take steps for issuance of his passport in accordance with the conditions prescribed in the office memorandum dated 10th October, 2019 and the judgments referred above and in case, the petitioner fulfills the requirement prescribed in the said office memorandum and the judgments of this Court, the concerned authority shall consider the case of the petitioner for issuance of his passport.

With the aforesaid direction, the writ petition is ***disposed of***.

Order Date :- 5.12.2023

Vipasha