

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 1340/2025
CM No. 3174/2025

Shakeela Begum

.....Petitioner(s)

Through: Mr. Sumir Pandita, Advocate

Vs

Union of India and Ors.

..... Respondent(s)

Through: Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI for R-1&2
Mrs. Monika Kohli, Sr. AAG for R-3&4

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
28.05.2025

1. Through the medium of the instant petition filed under provisions of Article 226 of the Constitution of India, petitioner has sought the issuance of writ/direction in the nature of *mandamus* for commanding the respondents to renew her passport bearing No. K0168736 in accordance with the law so as to enable her to accompany her ailing husband for going abroad in connection with his medical treatment.
2. Briefly put the facts of the petitioner's case are that she is a permanent resident/domicile of the UT of J&K, and a citizen of India, entitled to enforce her fundamental, legal and other statutory rights. That respondent No. 2 issued a passport in her favour bearing No. K0168736 in the year 2013 valid for a period of 10 years upto 03.01.2023. That unfortunately, she came to be falsely and frivolously implicated in a case FIR bearing No. RC0042013A0006 dated 18.07.2013 registered with Police Station

CBI (ACB) Jammu, as a co-accused arising out of a civil dispute regarding the bank loan. That after the expiry of the validity of the passport, she approached the respondents with the request for renewal of the same but subsequently she was conveyed that same could not be renewed because of the pendency of a criminal case against her. That earlier her passport was impounded by the Investigating Agency in the said case FIR which was subsequently released in her favour under a direction issued by this Court vide order dated 09.03.2018 passed in OWP No. 466/2018. That her fundamental rights guaranteed under the Constitution stand denied to her on account of the non-renewal of her passport.

3. In the facts and circumstances of the case, the matter with the consent of the learned counsel for the parties is taken up for final disposal.
4. I have heard the learned counsel for the petitioner who submitted that respondents are not justified to deny the renewal of the passport of the petitioner on the mere ground of the pendency of a criminal trial against her. The learned counsel submitted that the Hon'ble Apex Court in a landmark judgment reported as **2008(3) SCC 674** titled "***Suresh Nanda vs. CBI and Ors.***" has held that personal liberty within the meaning of Article 21 of the Constitution includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to the procedure prescribed by law. He further contended that the Hon'ble Apex Court in an another case titled as "***Vangala Kasturi***

Rangacharyulu Vs. Central Bureau of Investigation” decided on 27.09.2021 has observed that:-

“The refusal of a passport can be only in case where an applicant 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) related 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 objections 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. While placing reliance on an another Apex Court judgment reported in 2013 (15) SCC page 570 ***“Sumit Mehta Vs. State of NCT of Delhi”***, the learned counsel submitted that it has been observed in the said case as:

“The law presumes an accused to be innocent till his guilt is proved. As a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.”

6. The learned counsel in support of his petition also placed reliance on the judgment of the Andhra Pradesh High Court passed on 08.04.2022 in 2023 (4) ALT 406 (AP) ***“Ganni Bhaskara Rao Vs. Union of India and Anr.”*** inter-alia to the effect:-

“This Court after hearing both the learned counsel notices that Hon’ble Supreme Court of India, in Criminal Appeal No. 1342 of 2017, was dealing with a person, who was convicted by the Court and his appeal is pending for decision in the Supreme Court. The conviction was however stayed. In those circumstances also it was held that the passport authority cannot refuse the “renewal” of the passport. This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot “hold” or possess a passport. As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving “moral turpitude” to imprisonment of not less than two years. The use of the conjunction ‘and’ makes it clear that both the ingredients must be present. Every conviction is not a ground to impound the passport. If this is the situation post conviction, in the opinion of this Court, the pendency of a case/cases is not a ground to refuse, renewal or to demand the surrender of a passport.

The second issue here in this case is about the applicability of Section 6(2)(e) of the Passport Act. In the opinion of this Court that section applies to issuance of a fresh passport and not for renewal of a passport. It is also clear from GSR 570(E) which is the Notification relied upon by the learned counsel for the respondents and is referred to in the counter affidavit. This Notification clarifies the procedure to be followed under Section 6(2) of the Passport Act against a person whom the criminal cases are pending. This notification permits them to approach the Court and the Court can decide the period for which the passport is to be issued. This is clear from a reading of the Notification issued. Clause (a) (i)

states if no period is prescribed by the Court the passport should be issued for one year. Clause (a) (ii) states if the order of the Court gives permission to travel abroad for less than a year but has not prescribed the validity period of the passport, then the passport should be for one year. Lastly, Clause (a) (iii) states if the order of the Court permits foreign travel for more than one year but does not specify the validity of the passport, the passport should be issued for the period of travel mentioned in the order. Such a passport can also be renewed on Court orders. Therefore, a reading of GSR 570(E) makes it very clear that to give exception or to exempt applicants from the rigour of Section 6 (2)(f) of the Act, GSR 570(E) has been brought into operation. The issuance of the passport and the period of its validity; the period of travel etc., are thus under the aegis of and control of the Court.”

7. The learned counsel also submitted that petitioner has been intending since long to go for the Haj pilgrimage for performance of an essential religious practice.
8. Mrs. Monika Kohli, learned Sr. AAG appears and accepts notice on behalf of respondents 3 and 4 when Mr. Sumant Sudan, Advocate accepts notice for respondents 1 and 2 vice Mr. Vishal Sharma, learned DSGI.
9. The learned counsel for the respondents in rebuttal submitted that as per a Government notification, any person against whom any criminal case is pending and seeks extension/renewal of his/her passport shall approach the concerned trial Court for issuance of the NOC. The learned counsel for the respondents submitted that a notification bearing No. GSR 570(E) dated 25.08.1993 has been passed in clarification of the relevant

provisions of the Act barring an under trial accused to seek renewal of his passport.

10. It is a settled legal position that an accused is presumed to be innocent till proved guilty at the trial, beyond any shadow of doubt. The criminal case which is reported to be pending trial with the present petitioner as a co-accused therein is reported to have originated from a civil dispute and the allegations/charge against the petitioner is not of anti-national character. The petitioner is not seeking the issuance of the passport as a fresh case but the renewal of the same.

11. Accordingly, the instant petition is disposed of with the direction to the respondents to actively consider the renewal of the passport of the petitioner within a period of four weeks, without considering the pendency of trial against her as a co-accused, as any bar, provided she is otherwise entitled for renewal of her passport. The petitioner shall, however, seek the prior permission for going abroad from the learned trial Court, and inform the respondent No. 2 accordingly about the same.

12. Petition is **disposed of**.

(Mohd. Yousuf Wani)
Judge

Jammu
28.05.2025
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Whether approved for listing in a
law journal - Yes