

Court No. - 2

Case :- WRIT - C No. - 5911 of 2025

Petitioner :- Gulam Tahir Khan

Respondent :- U.O.I. Thru. Its Secy. Ministry Of External Affairs New Delhi
And 4 Others

Counsel for Petitioner :- Abhishek Khare

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

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Abhishek Khare, learned counsel for petitioner as well as Sri S.B.Pandey, Learned Dy. Solicitor General for India, on behalf of Union of India.

2. It has been submitted by learned counsel for petitioner that no criminal case is pending against the petitioner and this fact is duly substantiated with the document annexed at page No. 88.

3. It has further been submitted that even if the application for issuance of the passport cannot be kept pending for indefinite period in view of the law laid down by Division Bench of this Court in the case of **Pawan Kumar Rajbhar Vs. Union of India and Ors (Writ C No. 41540 of 2023)** as well as judgement of the Apex Court in case of **Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation, 2021 SCC OnLine SC 3549**.

4. However, learned Dy. Solicitor General for India vehemently opposed the prayer made by learned counsel for petitioner on the ground that Division Bench of this Court in the case of **Mohd. Talha Vs. Union of India & others**

(Writ C No. 1775/2025) and observed if criminal case is pending the application for issuance of passport cannot be considered.

5. Learned counsel for petitioner has also been contended that Clause 3 of the Office Memorandum dated 10th October, 2019, the Passport Authority has to pass order on the application for issuance of the passport even if criminal case is pending and if the required permission from the concerned court is not produced then the Passport Officer can refuse for issuance of passport but he cannot keep pending for long time.

6. After hearing learned counsel for parties, it is clear that the basic dispute is none consideration of application of the petitioner for issuance of passport. Thereafter the issue is whether the Passport Officer will not pass any order on the application for issuance of passport merely because criminal cases are pending against the applicant.

7. Section 6 of the Passport Act, 1967 conferred the power upon the Passport Officer to refuse to issuance of passport for vising any country when the proceeding in respect of offence alleged has been pending before the criminal court in India. Section 6 of the Passport Act, 1967 is quoted as under:-

**“6. Refusal of passports, travel documents.
Etc.—**

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

8. However, Section 22 of the Passport Act, 1967 carved out exception from the restriction imposed by Section 6 or any other provision of the Passport Act. However, Section 22 of the Passport Act, 1967 gives power to Central Government by issuing notification to exempt a person from the condition of Passport Act in the public interest. Section 22 of the Passport Act, 1967 is quoted as under:-

“22. Power to exempt.—

Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.”

9. In exercise of its power U/S 22 of Passport Act, the Government of India has issued Notification dated 25.08.1993 (G.S.R.570(E)). Through this Notification regor of Section 6(2)(f) of the Passport Act, 1967 has been diluted and it is provided that in case the court where the trial or proceeding is pending against a person, grants of the permission to the applicant to visit the foreign country then the Passport Officer will issue passport to such person despite the restriction U/S 6(2)(f) of the Passport Act. Notification 25.08.1993 is being quoted as under:-

**“MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION
New Delhi, the 25th August, 1993**

G.S.R.570(E).--In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 [15 of 1967] and in

supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely :-

(a) the passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

[No.VI/401/37/79]

Sd/-

L.K. Ponappa, Jt. Secy, (CPV)"

10. Despite issuance of Notification dated 25.08.1993 of the Central Government, several persons seeking issuance of passport had started filing application for getting 'No Objection Certification' (NOC) from the

concerned criminal court on the ground the permission as per Notification dated 25.08.1993 for issuance of passport is for visiting the foreign country and not for issuance of passport.

11. Thereafter, Central Government further issued clarification through Office Memorandum (OM) dated 06.12.2024 mentioning therein that the required permission as mentioned in the Notification dated 25.08.1993 does not mean provision for seeking permission or NOC from the court concerned for issuance of passport but it is the permission to depart from India in case person fails to produce required document before the Passport Officer then he can refuse to issue passport U/S 6 of the Passport Act. Relevant extract of Office Memorandum dated 06.12.2024 is quoted hereinbelow:-

“8. It may be noted that there is no such provision for seeking permission/NOC from the court concerned for issuance of passport; instead it is permission to depart from India. In case the applicant is unable to provide the prescribed documents, PIA may issue a refusal order under Section 6 of the Passport Act, 1967 prescribing provisions for appeal.”

12. From the above provisions, it is clear that issuance of passport itself is a permission to depart from India but visiting to a foreign country further require Visa permission from that country. Therefore, if any application is filed before the Passport Officer for issuance of Passport then despite pendency of criminal case, he can issue passport subject to condition of producing permission from the concerned court. If the person does not produce required permission from the concerned court then the Passport Officer will reject his application for issuance of passport. However, the judgment of Mohd. Talha (Supra) as relied upon by Dy. Solicitor General of India does not prohibit consideration of application for issuance of passport

and pass appropriate order even if required permission of the concerned criminal court is not produced, in such cases the Passport Officer may reject the application in exercise of its power U/S 6 of Passport Act but he cannot keep the application pending for long time.

13. Even the Coordinate Bench of this Court in the case of **Pawan Kumar Rajbhar (Supra)** and Hon'ble Supreme Court in **Vangala Kasturi Rangacharyulu (Supra)** has also observed that the application for issuance of passport cannot be kept pending for a long time.

14. Accordingly, the writ petition is **allowed** with a direction to respondent No. 2/Regional Passport Officer, Passport Bahwan, Lucknow, Uttar Pradesh to consider and decide the application of the petitioner for renewal of passport with expedition, say, within a period of four weeks from the date a certified copy of this order is produced before him.

(Arun Kumar Singh Deshwal,J.) (Alok Mathur, J.)

Order Date :- 25.6.2025

Ravi/