

Sr. No.232

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 6199 of 2016

Date of decision:07.09.2016

Hasham Deen and another

.....Petitioners

versus

The Union of India and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Kulwant Singh, Advocate
for the petitioners.

Mr. K.K.Chahal, Advocate
for respondent No. 1.

Mr. Indresh Goel, Advocate
for respondents No. 2 and 3.

Mr. Suresh Singla, Addl.AG, Punjab
for respondent No. 4.

Rakesh Kumar Jain, J.(Oral)

Petitioners are the husband and wife who have filed this petition for seeking a mandamus directing the respondents to issue passport which has been unnecessary delayed on the ground that an FIR has been registered against the petitioners.

It is averred in the application that the petitioners are the followers of islam and intend to visit the holy shrine of Mecca at Saudi Arabia. The petitioners had applied for passports vide application No. JA1079607336616(Petitioner No. 1) and JA1069607335816(Petitioner No.2). Their applications have been rejected by the respondents only on the ground that a criminal case bearing FIR No. 112, dated 18.09.2014 has been registered against them under Sections 323 and 324 IPC at Police Station Bullowal, District Hoshiarpur on the statement of one Rani daughter of

Gulab Deen.

Counsel for the petitioners has submitted that investigation has already been carried out in the said FIR and challan has been presented in the Court in which both the petitioners have been kept in Column No. 2 which means that the petitioners have not been arrayed as accused for the purpose of trial.

After notice, respondents have filed reply in which the only objection taken is that since the petitioners are involved in a criminal case, therefore, as per Section 6(f) of the Passports Act, 1967(for short, 'the Act') the petitioners are not entitled for the issuance of passport for the purpose of travelling abroad. However, It is admitted by the respondents that the petitioners have not been sent up for the purpose of trial as their names have been kept in column No. 2 of the chargesheet but they are afraid that in case an application is filed at the instance of the complainant or by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (Cr.P.C) and the petitioners are brought before the court as accused for the purpose of trial then Section 6(f) of the Act shall become operational.

In this regard, counsel for the petitioners has submitted that there is no likelihood of filing of any application under Section 319 of the Cr.P.C. but in case any such application is filed, the petitioners shall surrender their passport, on the asking of the Court, trying them in the said FIR but at present they are innocent because they are not being tried as accused in the said FIR and are entitled to be issued the passport for the purpose of undertaking their pilgrimage to the holy shrine of Mecca at Saudi Arabia.

I have heard learned counsel for the parties and keeping in view the facts and circumstances narrated hereinabove, the present petition is hereby disposed of with a direction to the respondents to issue the passports to the petitioners for the purpose of their pilgrimage to the holly shrine of Mecca at Saudi Arabia as prayed by them subject to the condition that in case any application is filed under Section 319 Cr.P.C. by the complainant or by the State agency and the petitioners are summoned by the competent court, then they shall surrender their passports to the Court, in case such an order is passed by the said court.

7th September, 2016
Shivani Kaushik

[Rakesh Kumar Jain]
Judge

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No