

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 565 of 2017

Date of Decision: February 27, 2017

Kanwaljit Singh Swani

.....Petitioner

Vs.

SSP UT Chandigarh and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. Sukant Gupta, Advocate for respondent No.1.

Mr. Indresh Goyal, Advocate for respondent No.4.

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M.M.S. BEDI, J. (ORAL)

Through instant petition, the petition seeks a writ in the nature of mandamus directing the police of UT Administration to submit correct police verification report to respondent no.4, the Regional Passport Officer, in order to enable him to get his passport from Regional Passport Officer, Chandigarh.

Brief facts relevant for the decision of the present case are that an FIR No.302 dated September 22, 2011 was registered against one Vipin

Kumar under Sections 420, 467 IPC on the allegation of substituting Engine and Chassis Numbers of total loss vehicles to stolen vehicles. The petitioner was not named in the FIR, copy of which has been annexed as annexure P-1. During the course of investigation, the petitioner's name emerged as a suspect and he was arrested but was released on bail on November 29, 2011. The investigation in the criminal case was completed on October 24, 2012 and final report was submitted. The petitioner was not charge-sheeted. His name, however, was kept in column No.2 with report annexure P-2 wherein it is mentioned that there is no evidence against the petitioner, Charan Singh and Arun Kumar, worth presenting challan against them. Their names have been kept in column No.2 after discussion with District Attorney. Stolen cars had been recovered from Vipin Kumar and Harvinder Singh, as such finding sufficient evidence against them, challan was presented against them. On June 13, 2013, the Judicial Magistrate Ist Class had issued notice to petitioner, Charanjit Singh and Arun Kumar, but on November 14, 2013, the following statement was made by SI Ghansham of Crime Branch, Sector 11:-

“Accused Kamaljeet, Charanjit and Arun Kumar were arrested in this case but challan has not been presented against them as no evidence was found against them during investigation in the present case. Above mentioned accused have been kept in column No.2 of the challan.”

On November 18, 2013, the petitioner moved an application to the SSP, Chandigarh for correction of the police record in Police Station, Sector 39, Chandigarh, mentioning therein that he might need 'Police Clearance Certificate' for his immigration on the sponsorship of his son who was living in Canada, anticipating adverse remarks against the arrest of petitioner. Copy of the said application is annexure P-4. The petitioner was advised by the police to submit a request to the Regional Passport Officer, Chandigarh for 'Police Clearance Certificate' as such he filed application annexure P-6 on November 28, 2013. Vide annexure P-7, the police submitted a report with an observation that proceedings are pending against the petitioner in a criminal Court. In police verification report, in the column No.7- a reading "Are any proceedings against the applicant pending in any criminal Court, it was remarked as 'yes'. However, in column No.9, it was mentioned as follows:-

"As per police record, case FIR No. 302 dated 22.9.2011 u/s 420, 467, 468, 471, 473, 474, 201, 411, 120-B IPC, P.S. Manimajra, Chandigarh found registered against the applicant. The position of the case may be obtained from applicant. Challan not produced in the court against Kamaljit Singh and order of the court and statement of I/O SI Ghanshyam is attached herewith."

The Regional Passport Officer on getting the said verification report sent a letter to the petitioner seeking clarification mentioning therein

that the petitioner had suppressed the material information in the passport which was issued to him in the year 2009 as such action would be taken against the petitioner for impounding his passport. Copy of the said letter has been appended with the petition as annexure P-8. The petitioner was directed to surrender his passport in the office of the Passport Officer along with explanation. The petitioner vide annexure P-9 informed the Passport Officer that police had not submitted any challan against him as such he was not an accused and was not facing trial in any Court. He also informed the Passport Officer that passport had been issued to him on August 31, 2009 and the criminal case was registered on September 29, 2011 as such he had not provided any false information in the year 2009. Copy of the final report was also sent to the Regional Passport Officer along with the reply. Vide a communication annexure P-10, dated February 11, 2014, in response to application dated January 28, 2014, it was informed by Police Department, Chandigarh that as the matter is pending in the Court, therefore, no police inquiry is needed. In view of the contradictions in the actual existing facts and the apparently misleading police verification report, the petitioner filed an application to the SSP, Chandigarh, annexure P-11, under public window system, requesting that correct police verification report be sent to the Passport Officer as the report did not clarify that the petitioner is not an accused in FIR any more and is not facing trial, having been kept in column No.2. The petitioner by moving an application under Right to Information Act sought the status of his application annexure P-11. From the

information supplied, the petitioner was informed that SI Juldan Singh, Police Station Mani Majra, UT Chandigarh had conducted an inquiry and submitted on April 2, 2014 that police kept the petitioner in column No.2 and does not want to take any action against the petitioner and two more accused and that the local police has no objection if the Hon'ble Court discharges the petitioner. On the same day, the Inspector/ SHO Police Station Mani Majra, UT Chandigarh, endorsed that SI's report of no objection in discharging the petitioner to DSP East which was approved by him, giving a finding under signatures of CRU that local police had no objection for discharge of the petitioner from the case. Copy of the report is appended with the writ petition as annexure P-12. On June 25, 2014, the Regional Passport officer, Chandigarh again sent a letter seeking clarification regarding issuance of passport to the petitioner while asking him to furnish final judgment/ orders of the Court in the case which was registered against him. It was also mentioned in the application that the petitioner was possessing another passport and had obtained the passport fraudulently with fake name. The letter of the Regional Passport Officer is annexure P-13.

While appearing on behalf of Passport Officer, counsel for Passport Officer clarified that as a matter of fact the petitioner has not been found possessing any other passport or giving fake name in personal particulars. The petitioner had, vide letter dated July 17, 2014, clarified that he was holding only one passport issued to him on August 31, 2009 after

surrendering his earlier passport bearing No. E4841930 for adding the surname Swani. A copy showing the cancellation of the earlier passport was also attached with the reply along with the report of the Police (annexure P-14). The petitioner claims that he along with his wife had visited Canada from April 27, 2015 to January 20, 2016 and again from July 27, 2016 to December 29, 2016. The immigration Department, Canada has written a letter to the petitioner and his wife to provide 'Police Clearance Certificate' by February 3, 2017, vide letter annexure P-16, as the Canadian immigration office reflected that 'Police Clearance Certificate' had to be obtained from SSP office. In that concern, screen shot of such instructions obtained by the petitioner has been placed on record as annexure P-17.

In view of the above said circumstances, the petitioner has approached this Court for necessary direction for issuance of a correct 'Police Clearance Certificate' by respondents No.1 to 3 and submit to respondent No.4 and for further action by the Regional Passport Officer.

Learned counsel for UT Administration Mr. Sukant Gupta has opposed the petition on the ground that no cause of action has accrued to the petitioner to approach this Court and that no relief can be granted to him as he is clearly a suspect in a criminal case. No doubt, the petitioner has been given a clear chit at the time of presentation of challan but he can be summoned as an additional accused by the Court. The factum of clearance certificate having been issued to the petitioner, has been admitted but

issuance of 'Police Clearance Certificate' has been objected to as the petitioner is still a suspect.

I have heard learned counsel for the petitioner at length and gone through all the documents. All the acts of a Government authority should pass the test of reasonableness. The fact that the petitioner is not named in FIR annexure P-1 is undisputed. At the time of presentation of challan under Section 173 (2) Cr.P.C., the petitioner was not challaned. Though the Court had issued notice to the petitioner but a statement was made in the Court annexure P-3, on November 14, 2013 that challan had not been presented as no evidence was found against the petitioner during investigation. The notice annexure P-13, dated June 25, 2014 for clarification issued to the petitioner was replied by the petitioner clarifying all the facts but the only difficulty with the petitioner is that he is not being granted the 'Police Clearance Certificate' informing the Regional Passport Officer that the petitioner is neither an accused till date nor he has been summoned. There is no material on the record indicating that any application for summoning the petitioner as an accused has been made by the prosecution agency. In said circumstances, curtailing the right of the petitioner to get a Police Clearance Certificate on the basis of technicalities is absolutely unreasonable infringing the rights of the petitioner of seeking and obtaining a document like clearance certificate which would enable him to travel. Till date no condition has been imposed upon the petitioner by any Court nor any such condition has been sought for by any one to stop him

from travelling abroad. On the basis of above said circumstances, it is clear that petitioner not being an accused till date and having been given a clean chit by the investigating officer by making a statement in the Court on November 14, 2013, the writ petition deserves to be allowed.

The petition is allowed. A direction is issued to the SSP, UT Chandigarh to issue ‘Police Clearance Certificate’ within a period of 15 days on the basis of no objection already furnished by Chandigarh police on April 2, 2016 for discharging the petitioner (annexure P-12 (Colly), the petitioner having not been issued any charge-sheet; no charges have been framed against him till date; no application under Section 319 Cr.P.C. having been filed against him till date; no condition having been imposed upon him restraining him from leaving India by State or the Court of law as it will be unreasonable to curtail his rights to get a clearance certificate. It will be open to respondent No.4 to issue the passport on the basis of ‘Police Clearance Certificate’.

This order has been passed without prejudice to the legal rights of the prosecution agency.

February 27, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.