

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

CWP-40286-2018 (O&M)
Date of decision : 21.05.2019

Gurcharan Singh Bhatti

...Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kamaldip S. Sidhu, Advocate,
for the petitioner.

Mr. Narender Kumar Vashisht, Senior Panel Counsel,
Union of India for respondent No.1.

Ms. Samina Dhir, DAG, Punjab,
for respondent Nos.2 and 3.

JITENDRA CHAUHAN, J.

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, *inter alia*, is for issuance of a writ of Mandamus, directing respondent No.1 to issue Passport to the petitioner.

It is contended that the petitioner retired on 31.07.2015, as Inspector from the Punjab Police after serving the department for more than 38 years. Prior to his retirement, the petitioner was falsely implicated in the cross version recorded as DDR No.13 dated 04.07.2013 under Sections 302 and 120-B of the Indian Penal Code (for short, 'the IPC) in FIR No.52 dated 04.07.2013, registered under Sections 307, 379, 323, 353, 186 and 148 read with Section 149 IPC at P.S. Sadar, Faridkot. The petitioner had applied for

issuance of a fresh passport vide online application dated 02.09.2015 but at that time, enquiry in the criminal case was still pending. As such, on the basis of police verification report dated 04.09.2015 submitted by respondent No.3, the Passport has not been issued to the petitioner. Subsequently, during the investigation conducted by a Special Investigation Team, the cross-version recorded in DDR No.13 *ibid* was found to be false and the petitioner was found to be innocent vide enquiry report dated 12.12.2016. Thereafter, the petitioner again applied for issuance of new passport vide online application dated 07.02.2017 (Annexure P-1). The petitioner was given appointment on 08.02.2017 by respondent No.1 for completion of documentation on which date the petitioner submitted all the documents including enquiry report dated 12.12.2016 and completed all the formalities. Thereafter, verification report was called from the concerned police, which vide report dated 20.02.2017 (Annexure P-3) though observed that the petitioner has been found innocent in the criminal case, but he should not be issued the passport.

It is submitted that petitioner is not a previous convict. He has not been involved in any other FIR except the cross-version recorded in DDR No.13 *ibid*, wherein, he has been found to be innocent by the Special Investigation Team. Therefore, mere pendency of a false criminal case does not debar the petitioner to get a Passport.

On the other hand, learned counsel for respondent No.1 refers to Section 6(2)(f) of the Passport Act, 1967, which empowers the Passport authorities to refuse to issue passport to a person against whom criminal proceedings are pending before a competent Court in India.

Learned State counsel submits that though the petitioner has been found innocent in the enquiry and placed in column No.2 of the challan, the trial Court is yet to decide the matter. Thus, the presence of the petitioner may be required during trial.

Heard.

This Court, while dealing with a similar controversy in ***Sahib Jaskaran Singh Vs. Union of India and others (P&H), 2016 (2) R.C.R. (Criminal) 798***, has held as under:-

“It appears that the passport of the petitioner is not being released solely on the ground of pendency of FIR No.238 dated 03.09.2012 against him. The question to be considered is whether a citizen can be denied the passport merely on the ground that a criminal case is registered against him.

*This very question was considered by this Court in **Daler Singh Vs. Union of India and ors CWP No.12143 of 2015.***

Taking note of the fact that as per Sections 6(2) and 10 (3) of the Passports Act, 1967, a passport can be refused or revoked or cancelled on the ground 'that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India', and that proceedings in respect of a criminal case can be said to be pending before a criminal court only when cognizance has been taken by the criminal court, it was held that a passport cannot be refused or cancelled only on the ground of registration of an FIR.

In the present case, as per the pleadings of the parties, the petitioner's passport is not being released

merely on the ground of pendency of the FIR and that the cancellation report submitted by the police has not yet been accepted by the Trial Court. Clearly, this is not a ground for which the passport can be refused or cancelled or impounded.”

In the present case as well, the issuance of passport has been denied to the petitioner only on the ground of pendency of the criminal proceedings and that the trial Court has not yet taken its view on the cancellation report.

In view of the above, as the petitioner has already moved an application for issuance of a Passport and also claims to have deposited the requisite fee, the instant petition is disposed of with a direction to respondent No.1 to release the passport to the petitioner, if there is no legal impediment, except the registration of the aforesaid case. However, in the case petitioner intends to travel abroad, he shall approach the concerned criminal Court and seek appropriate directions therefor and in case, his request is acceded to, the same shall be subject to furnishing surety in the form of indemnity bonds of ₹25,00,000/- apart from all other conditions as the competent court may impose.

Disposed of.

21.05.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No