

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPCR No. 64 of 2019**

Gaurav Dewangan S/o Shri Sunil Kumar Dewangan,  
Aged 32 years, R/o Sector 7, Road No. 41, Quarter  
No. 3-B, Bhilai Nagar, Tahsil and District Durg,  
Chhattisgarh.

**---Petitioner**

**Versus**

1. State of Chhattisgarh, through District Magistrate, Durg, Chhattisgarh.
2. Union of India, Through Regional Passport Office Raipur, 1<sup>st</sup> Floor, Commercial Complex, Sector 4, Pandit Deen Dayal Uppadhyay Nagar, Raipur, 492010, Chhattisgarh.

**--- Respondents**

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| For Petitioner     | : - Mr. M.N. Thakur, Advocate       |
| For State          | : - Mr. Ravi Bhagat, Dy. G.A.       |
| For Union of India | : - Mr. Ramakant Mishra, Asst. S.G. |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**14/12/2020**

1. The petitioner herein was granted passport being Passport No. G 7860144 under the provisions of the Passport Act, 1967, the validity of which expired on 02/07/2018. In the meanwhile, offence under Section 420/34 of IPC was registered against the petitioner due to which the application moved by

the petitioner seeking no objection for renewal of his passport was rejected by the trial Court vide order dated 21/08/2018 (Annexure P/3) holding that petitioner is not entitled for grant of no objection for renewal of his passport against which he preferred a revision but that too stood dismissed vide impugned order dated 24/10/2018 (Annexure P/4) against which this writ petition has been preferred by the petitioner.

2. Mr. M.N. Thakur, learned counsel for the petitioner, would submit that both the Courts below are absolutely unjustified in rejecting the application filed by the petitioner seeking no objection for renewal of his passport ignoring the notification dated 25/08/1993 issued by the Central Government by which subject to no objection from the criminal court, passport can be renewed during the pendency of the trial of the criminal case, as such, the impugned order affirming the order of the trial Court deserves to be set aside.

3. Mr. Ramakant Mishra, learned Assistant Solicitor General and Mr. Ravi Bhagat, learned Deputy Government Advocate, would submit that it be left to the criminal court for determination in light of the notification dated 25/08/1993.

4. I have heard learned counsel for the parties at length and perused the record.
5. In the matter of Maneka Gandhi v. Union of India<sup>1</sup>, the Supreme Court (Constitution Bench) has held that right to travel abroad is a part of personal liberty under Article 21 of the Constitution of India and right to travel abroad on the aspect of personal liberty cannot be curtailed without reasonable opportunity to show cause. It was further held that the procedure in Article 21 of the Constitution cannot be arbitrary, unfair, unreasonable and hence rules of natural justice must be followed before impounding a passport under Section 10(3)(c) of the Passports Act, 1967.
6. It is not in dispute that the petitioner was issued with passport being Passport No. G 7860144 which expired on 02/07/2018 for which he moved an application seeking no objection for renewal of his passport in which clarification was sought about the pendency of criminal case against the petitioner and his passport was not renewed pending trial, as the petitioner is suffering trial for the offence punishable under Section 420 read with Section 34 of the IPC.

7. Section 6(2)(f) of the Passports Act, 1967 is relevant and is noticed herein-below which

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<sup>1</sup> (1978) 1 SCC 248

prescribes that the passport authority shall refuse to issue a passport or travel document for visiting any foreign country on the ground that an offence committed by the person seeking renewal of passport is pending before a criminal court in India. Clause(f) of sub-section (2) of Section 6 of the Passports Act,1967 reads as follows :-

**"6. Refusal of passports, travel documents, etc.** (1)xxx xxx xxx

(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 no other ground, namely:-

(a) to (e) xxx xxx xxx

(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) to (i) xxx xxx xxx"

8. Thus, on account of pendency of criminal case, the passport authority is empowered to refuse to issue passport or travel documents for visiting any foreign country under clause (c) of sub-section (2) of Section 5 of the Passports Act, 1967.

9. Section 22 of the Passports Act, 1967 deals with power to 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. It reads as follows :-

**"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."

10. In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 and in super-session of the notification dated 14<sup>th</sup> April, 1976, the Central Government has issued a notification dated 25<sup>th</sup> August, 1993 exempting 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 Passports Act, 1967, which states as under :—

"MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 25<sup>th</sup> 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 14<sup>th</sup> 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]

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

11. A careful perusal of the aforesaid notification would reveal that application for issuance of passport is not liable to be refused on the ground of pendency of criminal case if the particular person obtains permission from the concerned criminal Court in line with the above-stated notification issued by the Central Government.

12. In the matter of Deepak Dwarkasingh Chhabria v. Union of India and another<sup>2</sup>, the Bombay High Court relying upon the notification dated 25<sup>th</sup> August, 1993 held that for issuance of passport, pendency of criminal case is not a bar, if person seeking issuance obtains permission from the concerned criminal Court for travel abroad, and observed as under :-

"10. In view of the aforesaid notifications by the Central Government, it is clear that the citizens against whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of

pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore cannot reject the application for passport mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to concerned Criminal Court for permission to the travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport of authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case the passport authority has failed to bring the relevant notification to the notice of the applicant in spite of the fact that the application was pending before the authority for more than one-and-half years. In fact it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2)(f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time the passport authority had informed the petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that till today the petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases."

13. As such, in view of the aforesaid notification dated 25<sup>th</sup> August, 1993, pendency of criminal

case for an offence is not a bar for issuance of passport, if the person seeking issuance obtains due permission from the jurisdictional criminal Court to travel abroad, therefore, in the instant case, the trial Magistrate was required to consider the application of the petitioner seeking no objection for renewal of his passport in light of the provisions contained in clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967 read with the notification dated 25<sup>th</sup> August, 1993 and in light of the decision of the Bombay High Court in **Deepak Dwarkasingh Chhabria** (supra), which has not been considered and the application has been rejected.

14. As a fallout and consequence of the aforesaid discussion, the impugned order dated 24/10/2018 (Annexure P/4) affirming the order of the trial Magistrate rejecting petitioner's application is hereby set-aside and the said application filed by the petitioner seeking no objection for renewal of his passport is restored for hearing and disposal in accordance with law and in light of the observations made herein-above and in light of the notification dated 25<sup>th</sup> August, 1993. The said application will be decided

afresh by the trial Court within two weeks from the date of receipt of a copy of this order and therefore, the petitioner is free to approach the passport authority in accordance with law. Petitioner is at liberty to move an application for modification of order granting bail to her.

15. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet