

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 10741 of 2020
Date of Decision: 21.8.2020

Sunil Kumar Bishnoi

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Ankur Sharma, Advocate
for the respondents.

HARNARESH SINGH GILL, J.

This is a petition under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari seeking quashing of the order/intimation dated 19.7.2018 (Annexure P-1 Colly) vide which the petitioner was intimated that his passport No. K2793805 had been impounded and the order dated 12.3.2020 (Annexure P-6) vide which the passport of the petitioner was seized.

Learned counsel for the petitioner states that passport No. K2793805 was duly issued by the Regional Passport Office, Chandigarh. On 16.11.2012, the petitioner went to New Zealand on a student visa which was extended by the Indian Consulate at New Zealand on 23.9.2014. The petitioner was granted Permanent Resident visa of New Zealand on 15.12.2016. While he was still in New Zealand, FIR No. 596 dated 22.10.2013 under Sections 498-A, 323, 406 and 506 IPC at Police

Station Sadar Fatehabad, District Fatehabad, had been got registered by Suman i.e. wife of the petitioner against the petitioner, his parents and brother. Vide order dated 06.5.2014 (Annexure P-4) passed by Chief Judicial Magistrate, Fatehabad, the petitioner, who had then been in New Zealand, was declared a proclaimed offender, without adopting the proper procedure. The petitioner challenged the said proclamation order in this Court and vide order dated 04.3.2020 (Annexure P-5), the arrest of the petitioner was stayed for 08 weeks, so that on arrival from New Zealand, he could move an application for setting aside the proclamation order and for grant of bail.

Learned counsel for the petitioner further submits that the petitioner came to India on 12.3.2020 and his passport was seized on the same day vide seizure memo dated 12.3.2020 (Annexure P-6). It is further argued that when the petitioner was in New Zealand, Regional Passport Office-respondent No. 3 had issued a letter dated 19.7.2018 (Annexure P-1) at his local address alleging that he had obtained the passport by suppressing/providing wrong information and he was directed to submit the passport in the office. The petitioner submitted his reply vide letter dated 12.9.2018 clarifying that neither any information had ever been suppressed nor any wrong information had been given but despite that his passport was impounded. Since no information had been suppressed by the petitioner at the time of issuance of passport, impounding of the passport is violative of the Articles 14 and 21 of the Constitution of India as Right to Life means Right to Live.

Still further, learned counsel for the petitioner has argued that the intimation regarding impounding of passport and show cause notice was

issued on the same date i.e. 19.7.2018, without affording any opportunity of hearing to the petitioner. Thus, the impugned order violates the very Fundamental Rights of the petitioner. In support of his contentions, he places reliance upon the judgment of Hon'ble Supreme Court in ***Unni Krishnan versus State of Andhra Pradesh, (1993) 1 SCC 645.***

Learned counsel for the petitioner has also relied upon the judgment of the Calcutta High Court in '***Kamal Kumar Narottam Dash Parekh versus Superintendent (Administration), Regional Passport Office, Ministry of External Affairs and others' 2009 (19) RCR (Civil) 813.*** Relevant extracts from the said judgment would read as under:-

“33. The question as to whether a passport ought to be impounded or not is required to be considered by the passport authority. The mere fact that certain conditions specified in Section 10(3) of the Act on the basis of which a passport can be impounded subsists in a given case cannot by itself result in impounding of a passport automatically.

34 xxxxxx.....The impugned order was passed without compliance with the principles of natural justice, and the order also suffers from the vice of non-application of mind. It would be for the passport authorities to decide whether there is any further ground for impounding the passport and if according to such authority such grounds subsist, they shall be at liberty to proceed afresh with notice to show cause against the writ petitioner. But the impugned order impounding the petitioner's passport cannot be sustained and the same is quashed.”

On the other hand, learned counsel appearing for Union of

India has stated that though the passport No. K-2793805 dated 25.6.2012 is

valid upto 24.6.2022 yet the department had received a complaint from Suman Rani, wife of the petitioner, stating that the petitioner had been declared a proclaimed offender by the Court of Chief Judicial Magistrate, Fatehabad on 06.5.2014 in case FIR No. 596 dated 22.10.2013 registered under Sections 498-A, 323, 406 and 506 IPC at Police Station Sadar Fatehabad, District Fatehabad and accordingly, a show cause notice was issued to the petitioner on 21.6.2018 and after the lapse of notice period, when on reply was received, the passport in question was impounded on 19.7.2018. Thus, it is prayed that the writ petition be dismissed with costs.

I have heard the learned counsel for the petitioner and the learned counsel for the respondents and with their able assistance, I have gone through the case file.

No doubt that in FIR No. 596 dated 22.10.2013 registered under Sections 498-A, 323, 406 and 506 IPC at Police Station Sadar Fatehabad, District Fatehabad, the petitioner was declared a proclaimed offender vide order dated 06.5.2014 passed by Chief Judicial Magistrate, Fatehabad, when the petitioner was in New Zealand on a valid visa. The petitioner had approached this Court by way of CRM-M-47407-2019 for protection before joining proceedings in the trial Court and the said petition was disposed of vide order dated 04.3.2020 (Annexure P-5) while staying his arrest for a period of 08 weeks.

In the present case, on arrival from New Zealand, the passport of the petitioner was seized vide seizure memo dated 12.3.2020 (Annexure P-6) and later, he had appeared before the trial Court and was granted bail.

The passport of the petitioner was impounded on 12.3.2020 by taking refuge to Section 10(3)(b) of the Passport Act, 1967 (in short 'Act').

Section 10(3)(b) of the Act would read as under:-

“If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf [Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.]”

The respondents have failed to place on record any document to show that any false information was given at the time of either applying for or obtaining of the passport by the petitioner or there was any FIR against the petitioner or there was any conviction as on the date of the submission of the application for issue of the passport or on the date of issuance thereof. Moreover, if the FIR in question had been registered against the petitioner because of matrimonial dispute, the authorities could have exempted the petitioner as per the provisions of Section 22 of the Act. Now at the stage when the petitioner has appeared before the trial Court and has been granted bail, the proclamation order itself goes. The petitioner had gone to New Zealand on a student visa on 16.11.2012 which was extended from time to time by the Indian Consulate at New Zealand and ultimately he was granted Permanent Residency and he never visited India when FIR No. 596 dated 22.10.2013 was registered at Fatehabad (Haryana). Impounding of Passport of the petitioner, without giving opportunity of hearing, is a violation of the Articles 14 and 21 of the Constitution of India. The show cause notice issued to the petitioner was sent at Fatehabad, whereas at that juncture, the petitioner had been in New Zealand. By impounding the passport of the petitioner, the authorities have debarred him of the Right to Travel abroad.

After considering his ability and performance, the Government of New

Zealand had granted him Permanent Residency. Thus, the expression “Personal Liberty” under Article 21 of the Constitution of India stood infringed.

Moreover, it may be noticed that the FIR and all other consequential proceedings took place when admittedly the petitioner was in New Zealand. It is only after the indulgence granted by this Court vide order dated 04.3.2020 in CRM-M-47407-2019, the petitioner joined the proceedings before the trial Court. Thus, as against the petitioner, the proceedings are yet at the investigation stage and the trial Court is yet to take cognizance thereof. Hence, the concept “proceedings pending in a Court” would only come into play as and when the cognizance is taken by the Court.

Whether or not the passport is to be impounded is within the domain of the passport authorities keeping in view the given facts and circumstances. However, in the present case, the conditions specified in Section 10(3) of the Act, are not attracted and thus, the impugned order is bad in law. This Court does not find that the petitioner has ever made any mis-declaration and/or has ever suppressed any fact from the passport authorities. Impounding of the passport, therefore, is violative of Articles 14 and 21 of the Constitution of India as it is well settled by now that Right to Travel abroad is a Fundamental Right.

Accordingly, the petition is allowed. Impugned order dated 19.7.2018 (Annexure P-1 Colly) and order dated 12.3.2020 i.e. seizure memo (Annexure P-6) are set aside. Respondent No. 3 is directed to consider the application submitted by the petitioner for releasing his passport, in accordance with law and pass an appropriate order in this regard

within six weeks from the date of receipt of copy of this order and communicate the decision taken thereof to the petitioner.

No order as to costs.

(HARNARESH SINGH GILL)
JUDGE

August 21st, 2020
Gurpreet

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