

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

CWP-14242-2020 (O&M)

Date of decision : 13.10.2020

Harvinder Singh Bajwa

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Deepak Verma, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab alongwith
Ms. Alka Meena, IPS, SSP, SBS Nagar.

Ms. Alisha Arora, Advocate for the Union of India alongwith
Mr. R.K. Bali, Regional Passport Officer.

ANIL KSHETARPAL, J.

The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, with the following substantive prayers:-

“(i) Issue a writ, order or direction, especially, in the nature of mandamus, so as to direct the respondents Passport Authorities (respondent Nos.1 & 2) to re-issue/renew the passport of the petitioner forthwith without any further delay, which has already been expired in April, 2020 and his application is unnecessarily being kept pending as per last communication dated 11.08.2020 (Annexure P-13), in the peculiar facts and circumstances of the case, in the interest of justice.

(ii) Further, a writ in the nature of certiorari to quash/set aside the impugned order dated 13.07.2020 (Annexure P-11) passed by Ld. Trial Court, absolutely on frivolous ground,

without considering the peculiar facts and circumstances of the case, and against the interest of petitioner, as petitioner is just seeking renewal of his passport and not the permission to go abroad, as has wrongly been considered, which would ultimately hamper the pendency of application with respondent passport authorities, hence, the prayer in the interest of justice.”

At the outset, it is appropriate to note that the Learned Additional Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, has committed a material irregularity while refusing to issue a necessary direction to the Regional Passport Officer, to renew the passport of the petitioner particularly when the trial of a criminal case involving the petitioner is pending in the Court..

Learned Judicial Magistrate has basically overlooked two notifications issued on 25.08.1993 and 10.10.2019, by the Ministry of External Affairs, providing that if the applicant is an accused in a criminal case pending in the Court, then neither the passport would be issued nor it would be renewed unless the concerned Court passes a specific order to this effect. In the present case, the Court has refused to issue a direction for renewal of the passport by leaving it open to the Passport Authorities to decide whether the passport of the accused-petitioner should be renewed or not. Whereas the Regional Passport Officer, sat on the file of the Petitioner, on the ground that the police has submitted an adverse report against the petitioner, with reference to pendency of the criminal trial involving the petitioner. Hence, the present writ petition for issuance of appropriate directions, to the Regional Passport Officer, for re-issue/renewal of his passport has been filed.

Some facts are required to be noticed.

The petitioner claims that he is a Green Card Holder, having permit to reside permanently in the United States of America, since the year 2000. He claims that after coming to India, when he started repairing his house, his brother-Paramjeet Singh Bajwa, attacked him. On the complaint of the writ petitioner, FIR No.76, dated 23.06.2017, under Sections 452, 324, 323, 34 of the Indian Penal Code, 1860, was registered against Paramjeet Singh Bajwa. On 23.06.2017 itself, a cross-case vide DDR No.17, was registered alleging that more than 1 dozen assailants trespassed in a School and damaged its property. In the cross version, the incident is alleged to be of 1 p.m., on 22.06.2017. The petitioner is one of accused in the Cross version. On conclusion of the investigation, the charges were framed on 10.07.2018.

During the pendency of the trial of the case, the petitioner applied for permission to visit the USA, which was conditionally allowed on 13.07.2018, by the Trial Judge, requiring him to file an affidavit that he will not have any objection to the recording of evidence, in his absence. The petitioner after filing the affidavit visited the USA and came back. Next year, once again, the permission applied was granted vide order dated 08.04.2019, permitting him to visit the USA for a period of six months. The petitioner once again, filed an affidavit that he will have no objection if the evidence is recorded, in his absence. The petitioner alleges that he went to the USA on 22.04.2019 and returned on 03.12.2019.

Thereafter, the petitioner filed an application before the Magistrate that the validity of his passport has lapsed on 27.04.2020 and his application for renewal has been kept in abeyance, on the ground that the

Court case is pending. Thus, the petitioner prayed that the necessary directions be issued to the authority to renew the passport. As noticed above, the learned trial Court dismissed the application.

Pursuant to the notice in the writ petition, the respondents have appeared and drawn the attention of the Court to the Instructions issued by Union of India, noticed in the beginning.

This Court has heard learned counsel for both the parties and with their able assistance perused the paper book.

At this stage, it is appropriate to reiterate that an accused is presumed to be innocent until convicted. Still further, the rights of an accused does not automatically get suspended merely because he is being prosecuted in a criminal case. Still further, right to personal liberty is one of the fundamental rights which can only be curtailed in accordance with the law. One of the facet of right to liberty is to travel abroad. Reference can made to a 5 judge bench judgment in **Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer (AIR 1967 Supreme Court 1836)**. In the absence of valid passport, one cannot travel abroad. Such facet of personal liberty can be curtailed only in accordance with the law **which must satisfy the test of reasonableness of one or more rights under the Constitution.**

While deciding such applications, the Courts must have regard to the nature of allegations, the conduct of the accused and above all, the need to ensure that the accused does not pose the risk of evading the prosecution. The concern of the Court ought to be only to ensure speedy trial of the criminal case and avoid the possibility of accused fleeing the reach of law. The liberty of a citizen or a non-citizen cannot be unreasonably curtailed except in the

circumstances as discussed above. Here is a case where the petitioner is struck in the country because he is an accused in a minor offence and conclusion of the trial of the case is taking a lot of time. It has been more than three years since the FIR was registered. The petitioner has already, with the prior permission of the Court, visited the USA twice during the pendency of the case and did come back. No doubt, the petitioner overstayed for a few days in the year 2019, however, he did return before the date fixed in the case. Still further, the petitioner has only applied for renewal/re-issue of the passport. The Senior Superintendent of Police, Nawanshahar, who has attended the hearing, admits that as per her information, the petitioner is an accused in the above referred case only. Sh. R.K. Bali, Regional Passport Officer, has also admitted that the re-issue of the passport has been withheld only on account of the adverse report from the Police, regarding the pendency of the criminal case.

Keeping in view the afore-said facts, the order dated 13.07.2020, passed by Additional Chief Judicial Magistrate, is set aside. A direction is issued to the passport authorities to immediately renew/re-issue the passport of the petitioner, on completion of all the formalities. The renewal shall not be withheld merely because of pendency of the trial in FIR No.76 and DDR No.17.

With these directions, the writ petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above stated judgment.

13.10.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No