

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 12531 of 2020

Date of decision : 12-02-2021

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Thomas Bhatti

.....Petitioner

Versus

Union of India and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Divjyot Singh Sandhu, Advocate for the petitioner.

Ms. Tanvi Jain, Advocate for the respondents.

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RITU BAHRI, J.

Through the present petition, the petitioner is seeking directions in the nature of mandamus directing the respondents to issue him the passport.

Briefly stated, the facts of the case are that the petitioner was issued passport No. M1654955 by Regional Passport Officer, Regional Passport Office, Jalandhar-respondent no.2 (hereinafter referred to as 'the respondent no.2') on 25.8.2014 which was valid till 24.8.2024. Since the above passport got damaged/mutilated, the petitioner applied for re-issuance of the said passport. The petitioner got involved in FIR No.58 dated 26.7.2016 under Section 22 of the NDPS Act registered at Police Station Talwandi Chaudhrian. The petitioner was granted interim bail vide order dated 9.9.2016 (Annexure

P-4). The interim bail was made absolute vide order dated 20.2.2017 (Annexure P-5) after the report of the chemical examiner was received since the alleged recovery was of 100 grams of Nitrazepam which is non commercial in nature. However, the passport authorities have refused to re-issue the passport to the petitioner.

On notice, reply has been filed by way of affidavit on behalf of respondent no.2 i.e Regional Passport Officer, Jalandhar. The stand taken in the reply is that the petitioner applied for the re-issuance of the passport by suppressing material information with regard to FIR No.58 dated 26.7.2016 registered under Section 22-61-85 of NDPS Act at PS Talwandi Chaudhrian against the petitioner. The copy of application made by the petitioner for re issuance of the passport is attached with the reply as Annexure R/2-1. In accordance with the process, the case of the petitioner was sent for the police verification. The police authorities had marked the report of the petitioner as 'Adverse' with the remarks that "FIR No.58 Dated 26.7.2016 under Section 22-61-85 of NDPS Act Police Station Talwandi Chaudhrian, Distt. Kapurthala registered against the applicant". The copy of the adverse police verification report is attached with the reply as Annexure R/2-2. As per the reply, the passport of the petitioner was held due to his own act and conduct and also by the 'adverse' police verification marked by the police authorities(security agencies). The case of the petitioner was again re-referred to the police authorities for the police verification by referring the points as mentioned in letter dated 27.8.2020 followed by Reminder-I dated 18.9.2020 (Annexure R/2-3 respectively). The respondent received a response dated 11.9.2020 (Annexure R/2-4) and the police

authorities again sent the adverse report. However, the above report due to oversight was taken to be the clear report. Though, it was adverse, the passport came to be issued on the basis of misreading of the adverse report as clear report and in this backdrop, the petitioner has been asked to surrender the passport vide letter dated 7.10.2020 (Annexure R-2/5). It has further been stated in the reply that as per the provisions of the Passport Act and the settled principles of law the passport of the petitioner cannot be released till the above mentioned FIR against the petitioner is not quashed or the clearance is given to the petitioner by the concerned police authorities.

Counsel for the respondents has placed on record a notification of the Ministry of External Affairs dated 21/08/2014, wherein it has been stated that whenever any applicant against whom proceedings before a criminal court are pending approaches any Passport Issuing Authority for the passport services, a copy of Gazette notification and proforma undertaking can be given to him/her with a covering letter directing him/her to fulfill the requirements prescribed in the Gazette notification. On submission of the same, his/her passport application may be processed and passport may be issued as per the provisions of the GSR 570 (E) and the contents of the court order.

Counsel for the petitioner has argued that passport of a citizen can be seized only by a competent authority to put a temporary ban on the travel. He has referred to a Coordinate Bench judgment of this Court in the case of *Hemant Goyal Versus State of Haryana, 2019 (1) Law Herald 33*, to contend that merely because there is an FIR

registered, should not generally be a good ground to deny permission to

a person to go abroad.

Learned counsel for the respondent has argued that the petitioner has applied for the re-issuance of the passport by suppressing material information with regard to FIR No. 58 dated 26/07/2016 registered under Sections 22-61-85 of NDPS act at Police Station Talwandi Chaudhrian against the petitioner. The stand of the respondent is that the passport of the petitioner was held due to his own act and conduct and also by the 'Adverse' police verification marked by the police authorities (security agencies). The case of the petitioner attracts the provisions of Section 10(3)(b) of the Passport Act, 1967. Section 10 (3) (b) of the Passport Act 1967 are extracted here under for the ready reference of this Court:

“3. The passport authority may impound or cause to be impounded or revoke a passport or travel document, -

(b) 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.

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Heard counsel for the parties. The short question which arises for consideration in the present writ petition is whether the petitioner could be denied the reissuance of his damaged passport only because while making application for renewal, he did not disclose that he was facing a criminal trial. The alleged recovery from the petitioner was of hundred grams of Nitrazepam which is non-commercial in nature. He was granted interim bail vide order dated 09/09/2016 (Annexure P-4) which was made absolute vide order dated 20/02/2017 (Annexure P-5).

At this stage, reference can be made to a judgement of Bombay High Court in the case of **Deepak Dwarkasingh Chhabria versus Union of India and another, 1997 AIR (Bombay) 181**, wherein, it was observed that pendency of criminal case is no bar to renewal of passport if the applicant obtains permission from the concerned criminal Court to travel out of India. Passport authority should inform the applicant about his right to apply to the court for such permission and supply the particulars about pending criminal case. In this case in paragraphs 6 and 7, it was observed as under:

6. The short question which falls for my consideration is whether the passport authority was right in rejecting the petitioner's application for renewal of the passport under [Section 6\(2\)\(f\)](#) of the Act. The passport authority has produced a letter dated 18th July, 1996 from the Additional Deputy Commissioner of Police/Additional S.P., ACB, Pune, enclosing a certificate issued by the Chief Judicial Magistrate, Pune, confirming that Regular Criminal

Case No. 39 of 1995 is pending against the petitioner under Sections 12B, 409, 420, 465, 471 and 109 of the IPC and the case is fixed on 19th August, 1996. The Additional Deputy Commissioner has opined that issuance of passport of the petitioner was not recommended. It is the case of passport authority that in view of the said letter, he had no option but to reject the petitioner's application under Section 6(2)(f) of the Act. It will be useful to state briefly the legislative background of the Act before considering the relevant provisions of Section 6(2)(f). The Act was enacted on 24th June, 1967 in view of the decision of the Supreme Court in the case of Satwant Singh Sawhney v. V. D. Ramarathnam. Assistant Passport Officer, Government of India, New Delhi, AIR 1967 SC 1836. Prior to coming into force of the said Act, there was no law in India regulating the issue of passport for leaving India and going abroad. The issue of passport was entirely within the discretion of the executive and this discretion was unguided and unchallenged. In Satwant Singh Sawhney's case (Supra) the Supreme Court by a majority held that the expression 'personal liberty' in Article 21 of the Constitution includes the right to travel abroad and under Article 21 no person can be deprived of his right to go abroad except according to the procedure established by law, and since no law had been made by the State regulating or prohibiting

the exercise of that right, the refusal to issue a passport was in violation of [Article 21](#) of the Constitution. It was held by the Supreme Court that the discretion with the execution in the matter of refusing or issuing a passport being unchanneled and arbitrary, it was plainly violative of [Article 14](#) of the Constitution and hence the order refusing passport to the petitioner was also invalid under that Article. This decision was accepted by the Parliament and the infirmity pointed out by it was set right by enactment of the Act. [Section 6\(2\)](#) of the said Act lays down 9 separate grounds on which the passport authority can refuse to issue, inter alia, a passport. By virtue of [Section 8](#), the same grounds apply to a case for renewal of passport. Therefore, by virtue of the said [Section 6\(2\)](#) read with [Section 8](#) of the said Act, it is made obligatory for the passport authority to refuse to renew the passport if one out of nine grounds mentioned in [Section 6\(2\)](#) is present. The relevant portion of [Section 6\(2\)](#) reads as follows :

"6(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 on no other grounds, namely :

(a)

(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).....

7. The Supreme Court considered the constitutional validity of some of the provisions of the Act in the land-mark case of [Maneka Gandhi v. Union of India](#), AIR 1978 SC 597. In that case the petitioner's passport was impounded 'in public interest' by an order dated 2nd July, 1977. The Government of India declined 'in the interest of the general public' to furnish the reasons for its decision. Thereupon, the petitioner filed writ petition under [Article 32](#) of the Constitution before the Supreme Court. The challenge was founded on various grounds. The constitutional validity of [Section 10\(3\)\(c\)](#) was also questioned. It is not necessary to deal with the judgment in detail as far as challenge to [Section 10\(3\)\(c\)](#) is concerned. Suffice it to say that the validity of [Section 10\(3\)\(c\)](#) was upheld by Supreme Court. However, it is necessary to note the law laid down by the majority in the context of Articles 14 of the Constitution. It was held that the procedure contemplated by [Article 21](#) must answer the test of reasonableness in order to be in conformity with [Article 14](#). Such procedure must be right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it should be no procedure at

all and the requirement of [article 21](#) would not be satisfied. The decision of the Supreme Court in Maneka Gandhi was delivered on 25th January, 1978.

At this stage, reference can also be given to a judgement of a Co-ordinate Bench of this Court in the case of **Sukhdev Singh and others versus Union of India and others, 2001 (2) RCR (Civil) 274**. In this case, police recommended not to grant passport to the petitioner because of his family's criminal background. Two FIRs were pointed out to be registered against him. In one FIR, he was acquitted and other was withdrawn by the state. He was also allowed to join government service. There was no other material for showing that if the petitioner is permitted to go abroad he would engage in activities prejudicial to the sovereignty and integrity of India. It was held by this Court that the right conferred under Article 21 of the Constitution of India cannot be taken away on the grounds which cannot stand the judicial scrutiny.

At this stage reference can also be made to a Coordinate bench judgement by Karnataka High Court in the case of **Venkatesh versus Paramesh and another 2018(2) AICLR 621**, wherein it was held that the court cannot restrict a person from exercising his statutory power that he can have passport but that does not mean that he can travel anywhere or everywhere and fly to foreign country without taking permission of the court or getting the bail conditions imposed relaxed. The petition was allowed with stringent conditions.

In another judgement by a Coordinate Bench of the

of U.P 2019 (3) AII, LJ 708, it was held that the passport or travel document of a person who is facing trial can be refused by the authority concerned during the pendency of his criminal case but there is no statutory bar for giving no objection by the court concerned. No hard and fast straightjacket formula can be done regarding issuance of permission or giving no objection by the court concerned. It is always discretion of the court concerned and depend upon the facts and circumstances of each case, act and conduct of the accused as well as nature of alleged offence committed by him and stage of trial etc. Sometime on account of enmity or ill will one party enmesh the other party in a frivolous criminal case to settle his personal score, therefore, in the interest of justice it is necessary to consider all aspects of the matter and surrounding circumstances while granting or refusing the no objection for renewal or reissue of passport or travel documents by the court concerned. The applicant was released on bail and keeping in view the nature of allegations, the impugned order was set aside and the direction was given to the authorities to issue passport with the undertaking that he will not leave India during the pendency of the trial without permission of the trial court, where trial is pending.

In the present case, as far as the petitioner's involvement in the criminal case is concerned he is on bail and his passport can be renewed with the condition that if he has to travel outside India, he will have to seek prior permission of the court if the trial is pending. In the present case the passport of the petitioner has been impounded by the respondents as per provisions of Section 10(3)(b) of the Passport Act,

taken by the applicant by suppressing material information, it can be impounded. However, there is no denying to the fact that when the passport was issued to the petitioner, he was not facing any criminal trial and thus he had not suppressed any material information. Provisions of Section 10(3)(b) of the Passport Act, 1967 are not attracted to the present case. It is not the case of the respondents that any other case is pending against the petitioner. The recovery of the narcotics effected from the petitioner was of non-commercial quantity.

In view of all that has been discussed above and in view of the judgements referred to above, the present writ petition deserves to be allowed as the petitioner is only seeking renewal of his passport. However, in case the petitioner has to travel abroad, he will have to seek necessary permission from the court, where the trial is pending.

12-02-2021
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No