

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18949 of 2021

Date of Decision: 01.12.2021

Sukhvinder Singh

....Petitioner

VS

Union of India and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gulzar Mohammad, Advocate
for the petitioner

Ms. Shweta Nahata, Advocate
for the respondents – UOI

SUDHIR MITTAL, J.

The petitioner is a citizen of India but is currently residing in France. A passport was issued to him on 12.07.2018 which expired on 11.07.2020. He applied for re-issuance thereof vide application dated 06.08.2020 submitted at the India Visa Application Centre Paris. An appointment was given to him for 25.08.2020. On 02.07.2021, he received a text message from the office of respondent No. 2 that upon police verification having been done, it has come to light that FIR No. 105 dated 26.04.2008 registered at Police Station Nakodar, District Jalandhar under Sections 307, 342, 323, 148, 149 IPC was pending and he was, accordingly, advised to take up the case with the police authorities or the Court. Thus, a legal notice dated 25.08.2021 (Annexure P-3) was submitted on behalf of the petitioner asking for issuance of interim NOC/passport so that he could come to India to face trial in the pending FIR in which he has been declared a proclaimed offender. A corrigendum dated 06.09.2021 was issued to the legal notice as there were errors in the same. Yet, no reply was received.

been argued that the Passport Rules, 1980 permit issuance of an emergency certificate to travel to India in situations such as the present one.

3. Learned counsel for the petitioner has submitted that in the first instance the petitioner travelled to Spain in the year 2008. Since then he has not returned to India. He was made an accused in absentia and challan was also presented in absentia. Thus, no notice was ever served upon the petitioner before he was declared as a proclaimed offender. The order is patently illegal and can not be sustained in law. Thus, the passport of the petitioner deserves to be reissued. Reliance has been placed upon ***Krishna Chiranjeevi Rao Palukuri Venkata vs. Union of India, 2020(10) SML KAR 1.***

4. Learned counsel for the respondents has stated that given the circumstances of this case the petitioner can only be issued an emergency certificate under Section 4(2)(a) of the Passports Act, 1967 (hereinafter referred to as 'the Act') to enable him to travel to India. Re-issuance of passport is not possible as a criminal trial is pending against the petitioner. Co-accused have already been convicted vide judgment dated 18.02.2013 passed by the learned Additional Sessions Judge, Jalandhar. Section 6 of the Act is not applicable as that pertains to issuance of a fresh passport or where a person wishes to travel abroad from India. The Judgment in ***Krishna Chiranjeevi Rao Palukuri Venkata (supra)*** is distinguishable, on facts. Further, the said judgment relies upon ***Ashok Khanna vs. Central Bureau of Investigation, 265(2019) DLT 614*** which has been declared to be not binding as a precedent vide order dated 31.08.2020 passed in Criminal Appeal No. 686 of 2018 titled as ***Ashok Khanna vs. Central Bureau of Investigation.***

5. It is the petitioner's own case, as revealed by his legal notice dated 25.08.2021 (Annexure P-3) that he has been declared a proclaimed offender by a

to him but he did not respond thereto. It also appears from the arguments of counsel for the respondents that the co-accused have been convicted vide judgment dated 18.02.2013 passed by the learned Additional Sessions Judge, Jalandhar and this fact has not been controverted by counsel for the petitioner. Clearly, a criminal trial is pending against the petitioner in which he has not put in appearance despite service of notice. Moreover, his earlier passport has expired and issuance of a new passport has been refused. Rule 4 of the Passports Rules 1980 (hereinafter referred to as 'the Rules') pertains to the classes of persons to whom passports or travel documents of different classes can be issued. Details are given in Schedule II to the Rules. Part II of Schedule II is reproduced below for ready reference:-

PART II

TRAVEL DOCUMENTS

Classes of Travel Documents		Classes of persons to whom issuable
1.	Emergency Certificate	(i) Citizens of India abroad who have been refused passport, or whose passports have been impounded or revoked, or who have to be repatriated to India. (ii) Persons who have produced <i>prima facie</i> evidence of Indian citizenship but the evidence is considered insufficient to justify the issue of a passport without further verification. (iii) Citizens of India abroad whose passports have been lost, stolen or damaged, and to whom new passports can not be issued without verification of their passport particulars by reference to the offices of Issue. (iv) Persons of Indian origin abroad when allowed to come to India for settling down here.
2.	Certificate of Identity	(i) Stateless persons residing in India, foreigners, whose country is not represented in India or whose country is not represented in India, or whose national status is in doubt. (ii) Persons exempted under Section 22 from the operation of the provisions of clause (a) of sub-Section (2) of Section 6.

6. The above shows that an emergency certificate can be issued to a citizen of India who is abroad and who has been refused a passport. The petitioner squarely falls in this class of persons. Refusal of passport can not be said to be illegal as in case a passport is issued to the petitioner he may utilize the same to evade the pending criminal trial. Instead of returning to India he may travel to some other country or may continue to reside in France. The judgment in ***Krishna Chiranjeevi Rao Palukuri Venkata (supra)***, most respectfully can not be considered as the said judgment has relied upon judgment of the Delhi High Court in ***Ashok Khanna (supra)*** which has been declared to be not binding as a precedent vide order dated 31.08.2020 passed in Criminal Appeal No. 686/2018. According to Section 6(2)(f) of the Act a person against whom a criminal trial is pending is not entitled to be issued a passport to travel abroad. There is no specific provision regulating instances such as the present one where a passport of an individual has expired while he is abroad and he has applied for re-issuance of a new passport. Ordinarily, there would be no hitch in issuance of a fresh passport provided no criminal trial is pending and no warrants have been issued against him. However, where the situation is as in the present case, a fugitive from the law can not be permitted to take advantage of the lacuna in a statute to get a passport which may be utilized to evade the law. I, therefore, hold that there is no illegality in refusal to issue a passport to the petitioner. The petitioner may apply for an emergency certificate to travel to India, if he so desires or else face the consequences of being in a foreign country without a valid passport.

7. In view of the above, the writ petition has no merit and is dismissed.

01.12.2021

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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No