

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

**Civil Writ Petition No.35638 of 2019
DATE OF DECISION: May 07, 2022**

Jatinder Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ajay Pal Singh Rehan, Advocate, for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate, for the respondents.

SUDHIR MITTAL, J.

The petitioner is a constable in the Punjab Police. He applied for and obtained Ex-India Leave from 19.05.2017 to 05.06.2017 from the O/o Senior Superintendent of Police, Gurdaspur. On 20.05.2017, when he was about to board the flight to London at the International Airport, Amritsar, his passport issued on 21.06.2016 was impounded without giving any satisfactory reason. On 23.05.2017, the petitioner approached the Regional Passport Officer, Jalandhar for reasons for impounding the passport and he was informed orally that the same was done on receipt of orders from the Ministry of External Affairs, Government of India through communication dated 08.11.2017. The petitioner thus filed CWP No.3328 of 2018 for quashing order dated 08.11.2017 and a detailed parawise reply was filed thereto. It was submitted that the petitioner had concealed the issuance of a passport dated 30.06.2005 and that the same was the reason for

impounding of his passport. Vide order dated 22.04.2019, the writ petition was disposed of with a direction to the respondents to consider a fresh application to be filed by the petitioner in accordance with law. On receipt of the fresh application, order dated 12.09.2019 was passed rejecting the same on the ground of issuance of letter dated 08.11.2017 by the Government of India in the Ministry of External Affairs. It is to be noted that the letter dated 08.11.2017 mentioned receipt of information from un-named sources that the petitioner could be involved in smuggling illegal immigrants into Europe since 2003 resulting in compromising the sovereignty, unity and integrity of India, as the reason for impounding the passport.

2. A detailed written statement has been filed on behalf of the Union of India and the Ministry of External Affairs. It has been mentioned therein that the Indian Embassy in France had received information from the French Authorities that an anonymous source had informed them that the petitioner could be involved in smuggling illegal immigrants into Europe since 2003. This was brought to the notice of Central Bureau of Investigation (CBI) who addressed communication dated 18.10.2016 to the Ministry of Home Affairs as well as the Ministry of External Affairs. The Ministry of External Affairs consequently issued a communication dated 16.03.2017 to the Passport Officer, Amritsar to take appropriate action in accordance with The Passports Act, 1967 (hereinafter referred to as the Act) and The Passport Manual, 2016 who further communicated the same to the Passport Officer, Jalandhar vide communication dated 11.05.2017. Thus, on account of suspicion that the petitioner was involved in trafficking of human beings into Europe, the passport was impounded. Another reason given is

that the petitioner had been issued five passports from 2000 to 2016 but he had disclosed issuance of only four passports in the writ petition. Thus, he is guilty of suppression of information.

3. Learned counsel for the petitioner has submitted that action of impounding of passport has been taken on the basis of suspicion only. A period of five years has elapsed since the passing of the impugned order but no material information has been placed on record to show that the respondents are in possession of credible and tangible evidence that the petitioner was involved in trafficking of human beings in Europe. Thus, Section 10(3)(c) of the Act is not attracted.

4. On the basis of reasons mentioned in the written statement, learned counsel for the respondents has supported the order.

5. Section 10(3)(c) of the Act is as under:-

“10. Variation, impounding and revocation of passports and travel documents.

(1) xxxxxx

(2) xxxxx

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(a) xxxxxx

(b) xxxxx

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) xxxxx”

6. The above provision entitles the passport authority to impound or revoke a passport or travel document if it deems it necessary to do so in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public.

7. Assuming that the petitioner has trafficked human beings into Europe, it would not amount to jeopardising the sovereignty and integrity of India. The sovereignty and integrity of a country may be threatened in case of subversive and terrorist activities. Trafficking of human beings would not fall in either category and thus, the reason given in communication dated 08.11.2017 is erroneous and improper. Trafficking in human beings may jeopardise friendly relations of India with a foreign country but it would be so only if there is tangible evidence available. The French Authorities had conveyed to the Indian Embassy only that they had received information through an anonymous source. Till date, the information received through the said source has not been substantiated as no material has been placed on record by way of credible evidence. It thus amounts to curtailing a citizen's right to travel abroad on the basis of suspicion alone. It is settled law that personal liberty cannot be curtailed on the basis of suspicion.

8. In *Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248*, the Supreme Court has held that a person can be deprived of his right to go abroad only in accordance with procedure prescribed by law. It has further been held that rules of natural justice would be applicable while exercising powers under Section 10(3) of the Act and if the facts of a particular case demand, the passport may be impounded without granting prior opportunity

of hearing provided such hearing is given immediately after the order is passed. The facts of this case show that due process has also not been followed while impounding the passport. Information of the alleged involvement of the petitioner in trafficking of human beings into Europe was received by the Government of India in October, 2016. The petitioner was in India at that time and was working in the police department. Thus, he could easily have been granted an opportunity of hearing before passing an order of impounding of the passport. Post decisional hearing, although not called for in the facts and circumstances of this case, has also not been provided.

9. The language of Section 10(3)(c) of the Act clarifies that the action of impounding of passport or revoking of travel documents should be taken only when the appropriate authority deems it necessary. Necessity implies that the facts of a particular case require action to be taken. A requirement to take a particular action can only arise if adequate and credible material is available. In the absence of any such material, there cannot be a requirement to take a positive action and thus, necessity would be non-existent. In the instant case, action has been taken only on the basis of suspicion and the same does not fulfill the requirement of the relevant provision of law.

10. From the above it is evident that there is no substantial evidence on record which may justify a conclusion that the actions of the petitioner endangered the sovereignty and integrity of the country or jeopardised friendly relations with a foreign country. Accordingly, no necessity existed of impounding the passport. Even, due process has not been followed while

impounding the passport. The impugned orders are patently illegal and deserve to be quashed.

11. In view of the above, impugned orders dated 08.11.2017 & 12.09.2019 are quashed. Respondents are directed to reinstate the passport of the petitioner forthwith.

May 07, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>