

D/L. 77.
August 11, 2023.
MNS.

WPA No. 14132 of 2023

Deborima Banerjee
Vs.
The Union of India and another

Mr. Kamalesh Bahttacharya,
Mr. Kalyan Kumar Pandey,
Mr. Uttam Kumar Roy,
Mr. Nirmalya Dhara

... for the petitioner.

Mr. Ashok Kumar Chakraborty,
Mr. Sauvik Nandy,
Mr. Rajesh Kumar Shah

...for the respondents.

Learned counsel for the petitioner contends that the petitioner is a 21-year-old lady and has her entire future prospects before her.

It is submitted that the petitioner was indicted in a criminal case, on the allegation that she had abetted suicide of a young boy, of about her age, due to her refusal to continue with the amorous affair with the said boy.

The criminal trial has already begun and the petitioner has obtained bail from the competent court.

It is submitted that, however, when the petitioner went to the Sessions Court, where the criminal trial is going on, for a no objection, in compliance with the relevant Circular issued by the

Government in that regard, to facilitate her obtaining a passport, the same was not given by the Sessions Court.

It is submitted, by placing reliance on the relevant provisions of law, that is, Section 6(2)(f) of the Passports Act, 1967 (1967 Act) and the relevant Circular dated October 10, 2019, that nothing in the said provisions contemplate any ground for refusal of such no objection to the petitioner.

It is submitted that this court, being a court of equity, ought to pass the appropriate orders, so that the passport is issued in favour of the petitioner.

Learned Additional Solicitor General objects to the prayer on several scores:

It is contended that Section 6(2)(f) of the 1967 Act is subject to Section 5 of the said Act. Section 5 provides for application for passports, travel documents etc. and sub-section (1) thereof stipulates that an application for the issuance of a passport under the Act for visiting such foreign country or countries as may be specified in the application may be made to the passport authority and shall be accompanied by such fee, as may be prescribed.

It is submitted that Section 6 clearly stipulates that, subject to the other provisions of the Act, the passport authority shall refuse to make an

endorsement for visiting any foreign country included in Clause (b) or Clause (c) of sub-section (2) of Section 5 on any one or more of the foreign countries thereafter.

It is submitted that in the present case, the provisions of Section 6(2)(f) have not been complied with as well, since a proceeding is pending before a criminal court against the petitioner, where the petitioner is an accused person and is on bail.

Learned Additional Solicitor General further stresses a point that the petitioner has made vague prayers in support of her application for passport. Nowhere within the four corners of the writ petition and/or the submission of the petitioner before the Sessions Court, did the petitioner place anything on record to indicate that she has any urgent need to travel abroad.

As such, in view of the absence of exigency, the passport authority was not at fault in not issuing a passport to the petitioner.

A perusal of Section 6(2)(f) shows that the pendency of a proceeding in respect of an offence alleged to have been committed by the applicant for a passport is one of the grounds for refusal to issue passport to an applicant.

Although Section 5 contemplates that application for issuance of passport is for visiting foreign countries, it is also indicated therein that such country may not be a named foreign country. Hence, the applicant need not mention any specific foreign country which he/she wants to visit, for getting a passport.

As such, there is nothing otherwise than the pendency of the criminal proceeding against the petitioner to debar the petitioner, as a citizen of India, to apply for passport, even without stipulating any specific exigency or urgency to leave the country.

In so far as the Circular dated October 10, 2019, issued in the form of an Office Memorandum of the Government of India, Ministry of External Affairs is concerned, the same, in unambiguous language, specifies that the Central Government exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India “and who produce orders from the court concerned permitting them to depart from India” from the operation of the provisions of Clause (f) of the subsection(2) of Section 6 of the 1967 Act.

Thus, even on a plain reading of the Office Memorandum, there is nothing on record to indicate

that a person has to show immediate exigency or urgency to leave the country for the issuance of a passport and/or for obtaining a no objection from the concerned criminal court. The above-referred Circular of the Government, rightly, does not interdict with the discretion of the criminal court taking up the proceeding regarding issuance of no objection.

Now coming to the order of the Sessions Judge, it has been contended that the proceeding before the criminal court was itself sought to be quashed in a criminal revision, which prayer was turned down.

However, there is nothing on record to indicate that any specific challenge has been preferred by the petitioner against the refusal of the criminal court to grant no objection to the petitioner as contemplated in the Circular-in-question, in the said revision or otherwise.

Strictly speaking, the refusal to grant such no objection is not an order passed under the Criminal Procedure Code and, as such, the same need not be subjected to scrutiny in a criminal revision before a criminal court.

Hence, this Court, sitting in equity jurisdiction under Article 226 of the Constitution of India, is sufficiently empowered to look into the veracity of

such refusal to grant no objection by the criminal court.

The bail order dated June 2, 2021, obtained by the petitioner, records, *inter alia*, that the father of the deceased wrote a letter to the I.C. Arambagh Police Station to hand over the body to his nephew Subhra Sarkar and in that letter it is clearly stated that they have no knowledge regarding the cause of suicide.

The Sessions Judge-in-charge, Hooghly, while passing the bail order, also recorded that if the suicide note was with the body on March 31, 2021 then why on April 1, 2021 the cause of suicide was unknown to the father of the deceased.

Moreover, it was observed, as per F.I.R. there was “some love affair” in between the present petitioner and the deceased and subsequently marriage of the petitioner was sought to be arranged elsewhere, due to which the deceased committed suicide.

Rightly, the court taking up the bail matter observed that it did not find any sufficient ingredient of abetment in the four corners of the case diary and it was not accepted that only since the marriage has been refused, the deceased committing suicide can be considered as sufficient abetment.

In the light of the said observations, as of date, there is nothing on record to indicate that the gravity of offence alleged against the petitioner is of such magnitude which can take away her personal liberty to get a passport as a citizen of India.

That apart, it is required to be kept in mind that the petitioner aspires to join a job as an airline crew in a particular agency and is undergoing training for such purpose. As such, the nature of job itself implicitly contains a condition that the petitioner ought to have a passport.

The petitioner contends through counsel, that production of a passport is an essential pre-condition to get such a job, although no averment has been made specifically in the writ petition and no material has been annexed to the writ petition in support thereof. However, it is evident that an airline crew ought, at least, to possess a valid passport.

Thus, refusal to issue a 'no objection' and, consequentially, a passport, may cost the petitioner her job and render her expensive training useless.

In such view of the matter, upon a comprehensive consideration of the allegations made and the materials on record, it is found that the refusal of the Additional Sessions Judge to issue a no

objection to the petitioner is an absolute travesty of justice.

The exercise of “discretion” by the Additional Sessions Judge, in the present case cannot be said to be so, but was merely whimsical. The Additional Sessions Judge, in her order, observed that the exemption is applicable to those persons who are required to depart from India for emergency reasons and who have been permitted to depart from India by the Court in which the criminal case is pending.

The component of emergency for getting a no objection is, however, not found in the concerned Circular.

The Additional Sessions Judge further observed that, in the instant case, the accused petitioner is applying for a “general passport” for the purpose of her service and in respect of this, the court is not the appropriate authority to either object or not object to the issuance of passport by the appropriate authority.

The Sessions Court again reiterated that the petitioner has to show exigent circumstances for any period of time for the purpose of getting such a no objection.

The above observations of the Additional Sessions Judge are patently *de hors* the law.

In any event, there will be a gross violation of Articles 14 and 19 of the Constitution of India, since the refusal of the no objection by the Additional Sessions Judge without any reasonable basis, would directly and adversely affect the petitioner's right to equality before the law as well as her right to pursue her chosen profession as a citizen of India and her freedom of movement.

Thus, I find the impugned refusal of no objection by the Sessions Judge, which ultimately led to the non-issuance of a passport to the petitioner, to be palpably bad in law.

Accordingly, WPA No. 14132 of 2023 is disposed of by directing the Additional Sessions Judge, Second Court, Arambagh, Hooghly, to immediately grant a no objection to the petitioner for the purpose of satisfying the requirement of the Office Memorandum dated October 10, 2019, within a week from the date of communication of this order to the Additional Sessions Judge.

The Additional Sessions Judge shall act on a server copy of this order, coupled with the written communication by the learned Advocate for the petitioner, for compliance of the same.

Upon getting such no objection from the Additional Sessions Judge, the petitioner will be at

liberty to approach the passport authority afresh with a proper application, annexing the said no objection.

Upon such approach being made, the passport authorities shall decide on the same by processing the same in due course of law as expeditiously as possible, positively within one month from the date of such application being made.

It is made clear, however, that nothing in this order has touched the merits of the criminal proceeding against the petitioner. The criminal court will be at liberty to proceed independently with the adjudication of the said proceeding in accordance with law, without being influenced or swayed in any manner whatsoever by any of the observations made herein. The observations made in this order are solely and exclusively for the purpose of adjudication of the *lis* before this Court and do not pertain to the merits of the criminal proceedings.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)