

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 33687 OF 2023

Between:

Mohammad Azam, S/o. Mohammad Mahboob Ali, Aged about 69 years, Occ.
Business, R/o 1-31/A, Mominpet, Vikarabad, Ranga Reddy District,
Telangana 501202.

...PETITIONER

AND

1. The Union of India, Ministry of External Affairs Rep.by its Secretary, Shastry Bhawan, New Delhi.
2. The Regional Passport Officer, Regional Passport Office, D.No.8-2-215 to 219, Kummarguda, Secunderabad.
3. The Commissioner of Police, Rachakonda Commissionerate, Ranga Reddy District.
4. The Station House Officer, Mominpet Police Station, Mominpet, Ranga Reddy District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, order or direction, in the nature of Mandamus, declaring action of the Respondents more particularly the action of the respondents 1 and 2 in not issuing the passport to the petitioner in pursuance of application dated 13-12-2022 as illegal, arbitrary and violative of articles of 14, 19 and 21 of Constitution of India besides violative of principles of natural justice and consequently direct the respondents 1 and 2 to issue passport to the petitioner without reference to pendency of Crime No 184/ 2022, crime No. 27 of 2013 and Cr. No. 28/2013 pending on the file of the 3rd respondent Police Station

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 1 and 2 to issue passport to the petitioner without reference to pendency of Crime No 184/ 2022, crime No. 27 of 2013 and Cr. No. 28/2013

pending on the file of the 3rd respondent Police Station in pursuance of application dated 13-12-2022 filed by the petitioner, pending disposal of the Writ Petition before this Hon'ble Court

Counsel for the Petitioner: SRI M. A. SHAKEEL

**Counsel for Respondent Nos. 1 & 2: Ms. B. KAVITHA YADAV
SC FOR CENTRAL GOVERNMENT**

Counsel for Respondent Nos. 3 & 4: GP FOR HOME

The Court made the following: ORDER

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.33687 OF 2023

ORDER:

Heard Mr.M.A.Shakeel, learned counsel appearing on behalf of the petitioner and Ms.B.Kavitha Yadav, learned counsel appearing on behalf of respondent Nos.1 and 2.

2. The petitioner approached the Court seeking the prayer as follows:

“to issue an appropriate Writ order or direction in the nature of Mandamus declaring action of the Respondents more particularly the action of the respondents 1 and 2 in not issuing the passport to the petitioner in pursuance of application dated 13.12.2022 as illegal, arbitrary and violative of articles of 14, 19 and 21 of Constitution of India besides violative of principles of natural justice and consequently direct the respondents 1 and 2 to issue passport to the petitioner without reference to pendency of Crime No.184/2022, Crime No.27 of 2013 and Cr.No.28/2013 pending on the file of the 3rd respondent Police Station and to pass such other order or orders in the circumstances of the case.”

3. Ms.B.Kavitha Yadav, learned counsel appearing on behalf of respondent Nos.1 and 2 brings on record written

instructions and in particular, the relevant paragraph Nos.3, 4, 5 and 6, read as follows:

3. This office issued a show cause notice vide SCN/302585233/15 dated 16.04.2015. The petitioner did not respond to the notice and accordingly, the file was closed on 26.08.2016 and a file closure intimate letter was sent to the petitioner vide FCL/304440073/16 dated 26.08.2016.

4. The new file was processed with Pre-Police verification and received adverse PVR stating that the applicant is involved in Cr.No.184/2022 U/s.341, 323 r/w 34 if the IPC of PS Mominpet, present case is under investigation.

5. This office has issued a show cause notice vide SCN/314226237/23 dated 07.02.2023 to furnish his explanation for suppression of information regarding his pending court case.

6. The petitioner approached this office and furnished his explanation letter dated 06.03.2023 stating that there is a case pending against him vide Cr.No.184/2022 and requested for issue of passport as he has to travel to Haj pilgrimage. This office advised him to furnish permission from the trial courts or acquittal order in all his pending court cases for our further processing."

4. Learned counsel appearing on behalf of the respondents submits that the subject issue in present writ petition is squarely covered by the order of this Court dated 21.11.2023 passed in W.P.No.31002 of 2023. Learned counsel for the petitioner does not dispute the said submission made by the learned counsel appearing on behalf of the respondents.

5. Taking into consideration the aforesaid facts and circumstances of the case, the writ petition is disposed of directing the respondent No.2 to consider the application of the petitioner dated 13.12.2022 seeking issuance of passport to the petitioner on the following conditions :-

i) The petitioner herein shall submit an undertaking along with an affidavit in Crime No.184/2022, Crime No.27 of 2013 and Cr.No.28/2013 on the file of Mominpet Police Station, stating that he shall not leave India during pendency of the said case without permission of the Court and that he shall co-operate with trial in concluding the proceedings in the said case.

ii) On filing such an undertaking as well as affidavit, the trial Court shall issue a certified copy of the same within two (02) weeks there from;

iii) The petitioner herein shall submit an application afresh along with certified copy of this order as well as the aforesaid undertaking before the Passport Officer/Authority concerned for issuance of passport;

iv) On filing such an application, the Passport Officer/Authority shall consider the same afresh in the light of

the observations made by this Court herein as well as the contents of the undertaking given by the petitioner for issuance of passport, in accordance with law, within three (03) weeks from the date of said application;

v) Respondent No.2 shall consider Rule 12 of the passport Rules, 1967 while considering the aforesaid application submitted by the petitioner.

vi) On issuance of the Passport, the petitioner herein shall deposit the same before the Mominpet Police Station; and

vii) However, liberty is granted to the petitioner herein to file an application before the learned Magistrate seeking permission to travel abroad, and it is for the learned Magistrate seeking permission to travel abroad, and it is for the learned Magistrate to consider the same in accordance with law.

6. Registry is directed to append the copy of the order dated 21.11.2023 in W.P.31002 of 2023 with this order.

Miscellaneous petitions, if any, pending in this writ
petition, shall stand closed. , , .

**SD/-C. PRAVEEN KUMAR
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Union of India, Ministry of External Affairs, Shastry Bhawan, New Delhi.
2. The Regional Passport Officer, Regional Passport Office, D.No.8-2-215 to 219, Kummarguda, Secunderabad.
3. The Commissioner of Police, Rachakonda Commissionerate, Ranga Reddy District.
4. The Station House Officer, Mominpet Police Station, Mominpet, Ranga Reddy District.
5. One CC to Sri M A Shakeel Advocate [OPUC]
6. One CC to Ms. B. Kavitha Yadav, Advocate(OPUC)
7. Two CCs to GP For Home, High Court for the State of Telangana. [OUT]

(Along with a copy of order dated 21.11.2023 in W.P.No.31002 of 2023)

8. Two CD Copies

MBC
BS

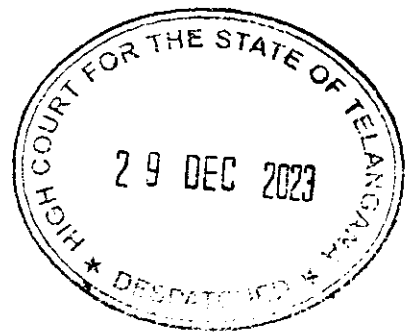
V. J.

HIGH COURT

DATED: 14/12/2023

ORDER

WP.No.33687 of 2023



DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

⑨ VW
29/12/23

HON'BLE SMT JUSTICE SUREPALLI NANDA

WRIT PETITION No.31002 of 2023

ORDER:

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents.

2. The prayer as sought for by the petitioner in the present writ petition reads as under:

"To issue an order writ or direction more particularly one in nature of writ of MANDUMUS declaring the action of respondent Nos.1 and 2 in not reissuing the passport to the petitioner in pursuance of application dated 27.07.2023 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India besides violative of principles of natural justice and consequently to direct respondent Nos.1 and 2 to issue passport to the petitioner without reference to pendency of C.C.No.1263 of 2017 pending on the file of the Court of the II Additional JFCM Court at Karimnagar."

PERUSED THE RECORD.

3. The learned counsel appearing on behalf of petitioner and learned counsel appearing on behalf of the respondents submit that the subject issue is squarely covered by the order

of this Court dated 28.06.2023 passed in W.P.No.16401 of 2023.

4. A perusal of the record would reveal that the petitioner herein is arrayed as accused No.1 in Crime No.307 of 2017 for the offences under Sections 3 and 4 of A.P.Gambling Act, KNR-I town Police Station, Karimnagar, and after completion of investigation, the Investigating Officer had filed charge sheet. The same was taken on file vide C.C.No.1263 of 2017 pending on the file of learned II Additional Judicial First Class Magistrate Court at Karimnagar.

5. The petitioner herein has submitted an application for issuance of passport vide application No.HY7065797921323, dated 27.07.2023 on the ground that he intended to travel abroad. The respondents herein are not issuing passport on the ground of pendency of the aforesaid criminal case against the petitioner.

6. Learned counsel appearing for the petitioner would submit that due to lack of knowledge petitioner herein has not mentioned about pendency of the aforesaid criminal proceedings against him in the application dated 27.07.2023. It is neither willful nor wanton. He would further submit that

the petitioner herein was falsely implicated in the aforesaid crime. Further, that the petitioner is also ready to co-operate with the trial. Therefore, the petitioner sought to issue necessary directions to the respondents for consideration of his application to issue passport.

7. Respondent No.2 cannot deny issuance of Passport on the ground that aforesaid Criminal Case is pending against him. It is also relevant to note that the Apex Court in **Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation**¹ had an occasion to examine the provisions of the Passports Act, pendency of criminal cases and held that refusal of a passport can be only in case where an applicant is convicted during the period of five (05) years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years. Section 6.2 (f) relates to a situation where the applicant is facing trial in a criminal Court. The petitioner therein was convicted in a case for the offences under Sections - 420, 468, 471 and 477A read with 120B of the IPC and also Section - 13 (2) read with Section 13 (1) of the Prevention of Corruption Act, 1988. Against which, an appeal

¹. 2020 Cr.L.J. (SC) 572

was filed and the same was dismissed. The sentence was reduced to a period of one (01) year. The petitioner therein had approached the Apex Court by way of filing an appeal and the same is pending. Therefore, considering the said facts, the Apex Court held that Passport Authority cannot refuse issuance of the passport on the ground of pendency of the criminal appeal. Thus, the Apex Court directed the Passport Authority to issue passport to the applicant without raising the objection relating to the pendency of the aforesaid criminal case.

8. As discussed above, the aforesaid criminal case is pending against the petitioner herein. The petitioner had submitted an application No.HY7065797921323 on 27.07.2023 for issuance of passport. Respondent No.2 is not considering the application for issuance of passport on the ground of pendency of the aforesaid case vide Crime No.307 of 2017. On the ground of pendency of the proceedings in criminal case, respondent No.2 cannot deny for issuance of passport to the petitioner herein. There is no provision in the Passports Act or Rules/Regulations that passport cannot be granted on the ground of pendency of criminal case. Further, the petitioner herein is standing on better footing than the

petitioner in **Vangala Kasturi Rangacharyulu**. In view of the same, respondent No.2 cannot deny or refuse to issue passport to the petitioner.

9. In view of the aforesaid discussion, this writ petition is disposed of directing the respondent No.2 herein to consider the application No.HY7065797921323 dated 27.07.2023 submitted by the petitioner seeking to issue passport on the following conditions:-

- i) The petitioner herein shall submit an undertaking along with an affidavit in C.C.No.1263 of 2017 pending on the file of learned II Additional Judicial First Class Magistrate Court at Karimnagar, stating that he shall not leave India during pendency of the said case without permission of the Court and that he shall co-operate with trial in concluding the proceedings in the said Case.**
- ii) On filing such an undertaking as well as affidavit, the trial Court shall issue a certified copy of the same within two (02) weeks there from;**
- iii) The petitioner herein shall submit an application afresh along with certified copy of this order as well as the aforesaid**

undertaking before the Passport Officer/ Authority concerned for issuance of passport;

- iv) On filing such an application, the Passport Officer/Authority shall consider the same afresh in the light of the observations made by this Court herein as well as the contents of the undertaking given by the petitioner for issuance of passport, in accordance with law, within three (03) weeks from the date of said application;**
- v) Respondent No.2 shall consider Rule 12 of the Passport Rules, 1967 while considering the aforesaid application submitted by the petitioner.**
- vi) On issuance of the Passport, the petitioner herein shall deposit the same before the trial Court in C.C.No.1263 of 2017; and**
- vii) However, liberty is granted to the petitioner herein to file an application before the learned Magistrate seeking permission to travel abroad, and it is for the learned Magistrate to consider the same in accordance with law.**

10. With these observations, the Writ petition is disposed of. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall also stand closed.

SUREPALLI NANDA, J

Date:21.11.2023
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