

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

203

CWP-26912 of 2019

Date of Decision:10.02.2023

Lakhwinder Singh @ Lakhi

....Petitioner

Versus

Union of India and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanjay Gupta, Advocate,
for petitioner.

Mr. Karan Kumar Jund, Advocate,
for respondents.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of mandamus for issuance of directions to the respondents to release the passport No. P5098135 dated 05.02.2017 to the petitioner as impounded vide seizure memo dated 12.12.2018.

Learned counsel for the petitioner submitted that it is a case where the petitioner was having a valid passport and on the basis of the aforesaid passport, he was to go to Germany since a child was born to him and his wife was in Germany and he had gone there. On 12.12.2018 he had gone to board a flight and when he was at Indira Gandhi International

Airport, New Delhi his passport was confiscated by the airport authorities with the result that he could not even go even though his child was born two days ago. He submitted that the respondent passport authorities have caused serious prejudice to the petitioner when they intimated the airport authorities for seizure of the passport since the exercise of power was not just and proper. He submitted that the petitioner was not intimated with regard to any order of impounding of passport by the passport authorities nor did he receive any notice in this regard and all of a sudden his passport was seized at the airport. He submitted that there was one FIR against the petitioner in which he was convicted in the year 2010 for a period of three years and he had filed a criminal appeal before this Court which is still pending. Learned counsel submitted that in that appeal he had rather filed an application for seeking permission to go abroad and a co-ordinate Bench of this Court on 18.01.2019 in CRM-46034 of 2019 in CRA-S-1722-SB-2010 allowed the application and directed the petitioner to appear before the CJM/Duty Magistrate, Nawanshahar on 21.01.2019 and furnish security to the satisfaction of the Court and the Court was also directed to take heavy security from the applicant-appellant. He submitted that no such application has been filed in terms of the aforesaid order since he was not in the possession of the passport and the passport is being illegally detained by the passport authorities. Learned counsel for the petitioner submitted that the seizure of the passport from the petitioner at the airport was without the authority of law.

On the other hand, Mr. Karan Kumar Jund, learned counsel appearing on behalf of the respondents-passport authorities has submitted that the passport of the petitioner had already been impounded by passing an order. He has supplied photostat copies of notice dated 27.02.2017 and order dated 27.02.2017 vide which the passport of the petitioner was impounded and photocopy of one document by which it can be seen that since there was an FIR pending against the petitioner, his passport was impounded. All the three documents are hereby taken on record as Mark-X, Y and Z respectively. He submitted that since the passport authorities passed an order on 27.02.2017 for impounding the passport of the petitioner, the petitioner instead of submitting and depositing the passport with the passport authorities has tried to travel abroad in December 2018 which was not proper on the part of the petitioner. He submitted that now in case the petitioner makes any application before the learned CJM in terms of the order dated 15.01.2019 passed by this Court vide (Annexure R-2/2) and satisfies the condition of the aforesaid order, the passport shall be returned to the petitioner so that he can travel abroad and the passport authorities will consider returning of the passport. He further submitted that even otherwise also the order of impounding is of date 27.02.2017 and the aforesaid order is appealable under Section 11 of the Passport Act, for which appeal has not been filed by the petitioner.

I have heard the learned counsels for the parties.

The grievance of the petitioner is that when he was to go abroad to meet his wife and newly born child on 12.12.2018, then at the airport his

passport was seized due to the instructions given by the passport authorities to the airport authorities for the same.

After hearing the learned counsels for the parties and perusal of the record and also the documents supplied by learned counsel for the respondents-passport authorities today, it is clear that on 27.02.2017 when the passport authorities issued notice to the petitioner as to why the passport should not be impounded and a perusal of the order of impounding would show that on the same date, i.e. 27.02.2017 an order of impounding was passed. Therefore, it is crystal clear that issuing of such a notice was an empty formality and an eyewash. It is not possible that the day on which notice was issued to show cause as to why passport should not be impounded and on the same date passport was ordered to be impounded. It makes it clear that the exercise of power by the passport authorities was totally illegal and arbitrary. On the face of it, the exercise of power was violative of principles of natural justice namely *Audi Alteram Partem*. The Hon'ble Supreme Court in **Maneka Gandhi versus Union of India** 1978 (1) SCC 248 dealt with this issue with regard to violation of principles of natural justice and impounding the passport straightway by the passport authorities without giving show cause notice. It was held that although power exists but the power has to be exercised in a just and fair manner. In the present case, *ex-facie* there had been wrong exercise of power by the passport authorities.

It is made clear that this Court is not making any observation with regard to the power which is vested in the passport authorities for taking action for impounding a passport but it is the exercise of power which is

wrongly exercised by the passport authorities in the present case which is clearly in violation of the principles of natural justice and contrary to the law laid down by the Supreme Court in the aforesaid judgment.

So far as the argument raised by learned counsel for the respondents-passport authorities that against the order of impounding of a passport, an appeal would lie under Section 11, the same is totally unsustainable and misconceived. It is a case of the petitioner that he never received any show cause notice or even an order of impounding the passport and apart from the above, when it is a case of *ex-facie* violation of principles of natural justice, the plea of alternate remedy will not be sustainable and this Court while exercising power under Article 226 of the Constitution of India can always invoke inherent powers when there is an *ex-facie* violation of principles of natural justice. Therefore the plea raised by learned counsel for the respondents-passport authorities deserves to be rejected.

The petitioner had already filed an application before an appellate Court where the appeal against his conviction is pending and the conviction is only for 3 years. Clause 6 (2)(e) provides that when the conviction is more than five years preceding the date of application, then there is no bar for issuance of passport. The conviction in the present case is of the year 2010.

In view of the aforesaid position, the present petition is allowed. The action of the respondents passport authorities in impounding the passport of the petitioner is violative of principles of natural justice. It is held to be arbitrary, illegal and in violation of principles of natural justice and the

law laid down by the Supreme Court in *Maneka Gandhi*'s case (supra). Consequently, the passport authorities are directed to return the passport of the petitioner forthwith.

So far as the application which the petitioner is to file before the learned CJM in pursuance of the aforesaid order passed by this Court (Annexure R-2/2), the petitioner shall be at liberty to do the needful in accordance with law. Since the order of impounding the passport is *ex-facie* illegal, the petitioner shall also be entitled for costs which are quantified at Rs.20,000/- which is to be paid to the petitioner within a period of three months from today.

The costs shall be paid by the office of the concerned Regional Passport Office and thereafter the Union of India shall be at liberty to fix the accountability of the officer(s) concerned and recover the same from him/them in accordance with law and by following proper procedure.

(JASGURPREET SINGH PURI)
JUDGE

February 10, 2023
dinesh

Whether speaking : Yes/No
Whether reportable : Yes/No