

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58653-2022 (O/M)
Date of decision : 11.08.2023

Baljinder Singh

..... Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Lavanya Gupta, Advocate
for the petitioner.

Mr. Karan Kumar Jund,
Central Government Counsel, Union of India
for respondents.

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HARSH BUNGER, J.

1. Petitioner (Baljinder Singh) has filed this petition under Section 482 of the Code of Criminal Procedure (*in short "Cr.P.C."*) for directing respondents No. 1 and 2 to renew his (petitioner's) passport for 10 years.
2. Briefly, the Petitioner is stated to be running a rice mill and his daughter Harjot Kaur is stated to be a permanent resident of Canada. Petitioner was issued a Passport No. J9396247, which was valid upto 22.11.2021. The petitioner was arrayed as an accused in case FIR No. 33 dated 14.02.2021 under Sections 323, 341, 427, 506, 295A, 148, 149 IPC, registered at Police Station City-2, Khanna, District Ludhiana, at the behest of one Shaminder Singh alias Mintu. The petitioner was granted bail in the said case FIR.

3. Since Petitioner's passport was expiring on 21.11.2021, accordingly, he moved an application before the learned Judicial Magistrate 1st Class, Khanna, seeking permission to renew his passport, which was allowed and the Regional Passport Office, Chandigarh was directed to renew his passport, vide order dated 20.09.2021 (Annexure P-4) by holding as under :-

“4. In the confirmed and considered opinion of this Court, the present application deserves to be allowed. The only ground which is argued by the learned APP for the State is that the accused may escape to foreign land and thus thwart the present trial. However, said plea is without any basis. The passport of the applicant is already with him and as per copy of said passport, same is valid upto 21.11.2021. So if he had any intention of escaping to foreign country, he would have easily done that by now or would do that before 21.11.2021. All what applicant desires is that permission be granted to the applicant to renew the said passport in time. Mere pendency of criminal case will not come in the way of the applicant for him to renew his passport. It is the basic right of every citizen of India to seek valid passport in order to travel abroad. Hence, permission is granted. However, applicant Baljinder Singh is directed not to travel abroad without seeking prior permission of the Court. Hence, in these terms, the present application stands disposed off.”

4. The Regional Passport Office, Chandigarh, issued a new passport to the petitioner i.e. Passport No. is V4909714 (Annexure P-5), however, the said renewal was for one year i.e. upto 23.11.2022.

5. Thereafter, the petitioner again approached the court of learned Judicial Magistrate 1st Class, Khanna, for renewal of his passport for ten years, however, the said application was declined by the learned Judicial Magistrate 1st

Class, Khanna, vide order dated 29.10.2022 (Annexure P-6), by observing as under :-

“4. In the confirmed and considered opinion of this Court, the present application deserves to be dismissed. It is pertinent here to mention that vide order dated 20.09.2021, the application of applicant Baljinder Singh son of Kuldeep Singh was allowed as per his prayer. In the said application, then no such point was raised that the passport be renewed for full time i.e. 10 years. Now vide the instant application, it is prayed that directions be issued to the concerned passport authorities to renew the passport for full time i.e. 10 years. However, earlier order of the Court is still in operation. The passport has already been renewed as per averments in the application itself. The Court cannot review its own earlier order and issue fresh directions in this regard. The passport authorities have apparently made passport as per the rules in this regard. If applicant Baljinder Singh son of Kuldeep Singh has any grievance against the said passport authorities, the said grievance is civil nature for which the applicant has civil remedy to avail but this Court does not have any power to reivew its earlier order. So with these observations, the instant application in hand stands disposed off being dismissed.”

6. In the aforementioned circumstances, the petitioner has filed the instant petition before this court.

7. The petitioner claims that he is about 50 years old with clean antecedents until the aforesaid false case FIR was lodged due to political rivalry. Petitioner's daughter Harjot Kaur is a permanent resident of Canada and her PR card alongwith her Passport of India (Annexure P-7 and Annexure P-8 respectively) are attached with the petition. The petitioner states that any emergency visit to her daughter abroad cannot be ruled out in the case of any dire

need of emergency, however in view of pending case FIR, the petitioner would firstly require the permission of the Court and then apply for the visa. It is stated that before submitting an application for visa and for travelling abroad to Canada or any other country, there is also a requirement that the passport should be valid for next six months. As per the petitioner, he lastly travelled to Canada in 2018 and is not likely to abscond/flee.

8. Learned counsel for the petitioner submits that presently due to rush of visa applications, the appointments for visa interview are not easily available and in some cases it may extend beyond three months and for countries like United States of America, the dates are being given beyond the period of one year. Accordingly, learned counsel for the petitioner submits that renewing the passport of the petitioner for a period of only one year may not be of any use, accordingly it is prayed that an appropriate direction be issued to respondents No. 1 and 2 to renew the passport of the petitioner for 10 years period or any other period as this court may deem fit.

9. On the other hand, learned counsel representing respondent-Union of India has filed his response to the petition filed by the petitioner, wherein it has been stated that as per Section 6 (2) (f) of the Passports Act, 1967, the passport authority shall refuse to issue passport or travel document for visiting any foreign country, if proceedings in respect of an offence alleged to have been committed by the applicant is pending before a criminal Court in India. It is further stated that the Ministry of External Affairs, Government of India, vide office memorandum dated 10.10.2019 has granted liberty to issue passport to the applicants against whom criminal cases are pending before a Court of India and who produce orders

from the Court concerned permitting them to depart from India subject to the conditions mentioned in the said memorandum.

10. Learned counsel appearing for respondent-Union of India submits that after the expiry of petitioner's Passport No. V4909714 on 23.11.2022, there is no application for issuance of passport submitted by the petitioner which is pending with the office of passport authorities. He further submits that respondents have no objection if the petitioner applies for a fresh passport with all the necessary documents alongwith current status of the FIR and permission of the Court concerned, specifying the period for which the passport is to be issued and after complying with the provisions made in office memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India.

11. I have heard learned counsels for the parties and perused the paperbook as well as reply filed on behalf of respondent-Union of India.

12. Concededly, the petitioner was issued Passport No. J9396247, which was issued on 22.11.2011 and the same was valid till 21.11.2021. In pursuance to the order dated 20.09.2021 (Annexure P-4), the petitioner was issued a new Passport No. V4909714, which had a validity of one year only i.e. upto 23.11.2022. The petitioner is seeking a direction to respondents to renew his passport for regular 10 years.

13. Here, it would be relevant to extract Section 6 (2) (f) of the Passports Act, 1967, which reads as under :-

“Section 6. Refusal of passports, travel documents, etc.

(1) xxxxxx xxxxxx xxxxx

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on

any one or more of the following grounds, and on no other ground, namely:--

(a) to (e) xxxxxx xxxxxx xxxxxx

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

xxxxxx xxxxxx xxxxxx”

14. Further the Ministry of External Affairs, Government of India has issued an office memorandum dated 10.10.2019, which deals with the issue of passports to applicants against whom criminal cases are pending before a court of law in India, which reads as under :-

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No. VI/401/1/5/2019
Government of India
Ministry of External Affairs
PSP Division

*Patiala House Annexe, Tilak Marg
New Delhi, the 10th October 2019
OFFICE MEMORANDUM*

Subject: Issue of passports to applicants against whom criminal cases are pending before a court of law in India.

Reference is invited to Notification No. GSR 570(E) dated 25.8.1993 regarding issuance of passports to applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clause (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

2. G.S.R. 570(E) dated 25.8.1993 is reproduced below for reference

GSR 570 (E).In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.GSR 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby 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 sub-section (2) of Section 6 of the said Act, subject to the following conditions,

namely:—

(a) the passport to be issued to every such citizen shall be issued—

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year;

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a)(ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the pass port or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

3. *It may be noted that applicants may be refused passports only on grounds mentioned under Section 6 (2) of the Passports Act, 1967. Section 6 (2) (f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570 (E) dated 25.08.1993 was introduced to give relief to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570 (E) and an order from the Court, an applicant could be issued a short validity passport of one year validity or for the period specified by the Court.*

4. *It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6 (2) (f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble High Court of Delhi in W.P. (CRL.) No. 2844/2018/CRL.M.A.48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.*

5. *In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:*

(i) The provisions of GSR 570 (E) may be strictly applied in all case. GSR 570 (E) is a statutory notification and hence, forms part of the Rules. It is to be noted that as per Section 5 (2) of the Passports Act, 1967, the passport authority shall by order in writing take a decision whether to issue or refuse a passport, after making such inquiry, if any, as it may consider necessary. Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued for a shorter period than the prescribed period if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a note clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre- Police Verification (PV) mode. "Pre-PV" would be mandatory in all cases of applications submitted with GSR 570(E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report (PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be

moved to “post-PV” mode or “No-PV” mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10 (3) (b) of the Passports Act, 1967 after following the due procedure.

(v) In case where the first police verification (PV) is 'Adverse', secondary police verification may be generated. While a secondary PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6 (2) (f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court(s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted by the applicant and complaints or other court orders, if any, that may have been received against the applicant.

(x) It may noted that GSR 570(E) only exempts and applicant from the operation of Section 6 (2) (f) and none of the other sub-sections of Section 6 (2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of Section 6 (2) (f) of the Passports Act, 1967.

6. The above instructions may be noted for strict compliance with immediate effect.”

15. A perusal of the office memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India, would manifest that the persons against whom criminal proceedings are pending in any court of law in India; can be issued passport upon the orders of the court for such period as may be specified by the court in its order. The office memorandum dated 10.10.2019 further inter-alia provides that in case no period is specified by court in its order then passport Authorities can issue passport to the applicant for one year validity.

16. In view of the provisions of the office memorandum dated 10.10.2019 and upon considering the case of the petitioner and taking into account the submissions made by the counsels for the respective parties and also taking note of the fact that vide order dated 20.09.2021 (Annexure P-4), the court below had allowed the application filed by petitioner for renewal of passport,

consequent to which petitioner was issued new passport No. V4909714 having validity of one year; I deem it appropriate to dispose this petition with the following directions:-

(i) In case the petitioner has already applied for renewal of his passport OR in case the petitioner applies for renewal of his passport; then the Passport Authorities shall renew the passport of the petitioner for a period of **three years**;

(ii) Before renewing the passport of the petitioner, the Passport Authorities shall ensure compliance of the office memorandum dated 10.10.2019 issued by the Ministry of External Affairs, Government of India or any other legal requirement(s).

17. Accordingly, the instant petition is disposed of in aforesaid terms.

18. All pending applications (if any) shall stand closed.

(HARSH BUNGER)
JUDGE

11.08.2023.
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No