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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5164-2018 (O&M)
Date of Decision:24.01.2023

Wassan Singh

....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bikramjit Singh Baath, Advocate, for the petitioner.

Mr. Amit Sharma, Advocate for respondent Nos. 1 and 2.

Ms. Akshita Chauhan, DAG, Punjab, for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of Certiorari for quashing of the impugned order dated 31.01.2018 (Annexure P-3) passed by the Regional Passport Authority, Jalandhar whereby passport has been declined to the petitioner by respondent No.2 on the basis of adverse report of the police authorities.

The brief facts of the present case are that the petitioner had applied for issuance of passport to the concerned Passport Authority but in the year 2012, he was informed by the Superintendent, Passport Office, Amritsar vide Annexure P-1 dated 11.10.2012 that his passport application dated 27.12.2010 was received with adverse PVR from Senior

Superintendent of Police, Gurdaspur and then his case was referred to the Ministry of External Affairs, New Delhi for approval and reply was received from Ministry of External Affairs in which they had stated that in view of adverse report, Ministry is unable to grant passport facilities to the petitioner. Thereafter, the petitioner filed a writ petition before this Court bearing CWP No.6502 of 2014 which was disposed of by this Court vide Annexure P-2 on 13.12.2017. The respondent authorities had submitted before this Court in the aforesaid writ petition that a decision has been taken by the Ministry of External Affairs on 20.11.2017 to the effect that in case the petitioner submits a fresh application for re-issuance of his passport, then the same shall be processed by the concerned Passport Authority and in case a fresh application is submitted, the same shall be processed and decision thereon shall be taken at the earliest, in any case not later than six weeks on receipt thereof. The said writ petition was disposed of with a liberty to the petitioner to seek revival of the petition in case any cause of action survives. The aforesaid order dated 13.12.2017 is reproduced as under:-

“Petitioner has prayed for quashing of order dated 11.10.2012, Annexure P-2 whereby passport facilities extended to petitioner were withdrawn and further prayer that authorities may issue/reissue a passport to petitioner to enable him to travel abroad. At the outset, learned counsel for respondents no. 1 & 2 submits that a decision has been taken by Ministry of External Affairs on 20.11.2017 to the effect that in case petitioner submits a fresh application for reissue of his passport, same shall be processed by the concerned passport authority. A copy of the communication has been placed on record. He further submits that in case fresh application is submitted, same shall be processed and decision thereon shall be taken at the earliest, in

any case not later than six week's on receipt thereof.

*In view of above, no further direction is necessary.
Petition is disposed of. However, petitioner shall be at liberty to
seek revival of the petition in case any cause of action survives.”*

Thereafter, the petitioner filed a fresh application to the Passport Authorities on 08.01.2018 and in pursuance of the aforesaid order passed by this Court vide Annexure P-2, the concerned Passport Authorities were required to pass an order on the fresh application. The Passport Authorities i.e. respondent No.2 thereafter passed the impugned order (Annexure P-3) on 31.01.2018 by which it has been so stated by the Passport Officer that in the absence of clear police verification report from the police authorities, the office was not in a position to issue passport in view of Section 6(2) (f) of the Passports Act, 1967. The relevant portion of the impugned order is reproduced as under:-

“This has reference to your application dated 08.01.2018 for issue of passport submitted by you in the light of the order passed by the Hon'ble Justice Shri Rajan Gupta, Judge, Punjab and Haryana High Court, Chandigarh in the above noted case.

In this behalf, as per record of this office, it is revealed that you applied for issue of passport vide file no.JA2061874373418 on 08.01.2018 in the particulars of Wassan Singh s/o Surjit Singh and Kulwant Kaur, spouse name Darshan Kaur r/o VPO Jaffarwal, Gurdaspur by suppressing material information with regard to case FIRs already registered against you. However, your passport application for issuance of passport was processed and granted subject to Pre Police Verification Report with prejudice.

In response, the police authorities concerned has not recommended you passport facilities with the remarks that

“A Case FIR No.151/2015 u/s 124-A, 153-B, 115, 117, 120-B IPC Sec. 13(1) of Unlawful Act, 1967, Police Station Chatiwind, Distt. ASR has been under investigation, FIR No.139/2015 u/s 341, 117, 147, 151, 120-B IPC, 8-B of National Highway Act, 1956 in this case cancellation report is still pending in Court. Hence, in the absence of clear police verification report from the police authorities, this office is not in a position to issue passport in favour of your u/s 6(2) (f) of the passport Act, 1967.

With these observation your application dated 08.01.2018, in compliance to the directions of the Hon'ble Punjab and Haryana High Court at Chandigarh dated 13.12.2017 is disposed of accordingly.”

Mr. Bikramjit Singh Baath, Advocate appearing on behalf of the petitioner submitted that despite the fact that the present petition, which is a second round of litigation, the action of the respondent-Passport Authorities was not only arbitrary but also unfair since the reasons mentioned in the impugned order are contrary to the settled law and the statutory provisions. He submitted that a perusal of the impugned order would show that reference has been made to two FIRs i.e. FIR No.151 of 2015, under Sections 124-A, 153-B, 115,117, 120-B IPC and Section 13(1) of Unlawful Activities (Prevention) Act, 1967, Police Station Chatiwind, District Amritsar and FIR No.139 of 2015, under Sections 341, 117, 147, 151, 120-B IPC and Section 8-B of National Highway Act, 1956. He submitted that in both the FIRs even challan was not presented by the police against the petitioner and they were at the stage of investigation only and therefore, a mere pendency of the FIRs cannot create any embargo upon the petitioner for getting the passport. He referred to two judgments of this Court in ***Daler Singh Vs. Union of India and others [2015(8) RCR***

(Civil) 618]and *Sahib Jaskaran Singh Versus Union of India and others [CWP No.19551 of 2015]* to contend that mere pendency of FIRs do not come within the scope of Section 6(2) of the Passports Act, 1967. By way of impugned order, the Passport Authorities have not granted passport to the petitioner in view of Section 6(2) (f) of the Passports Act which pertain only to the proceedings in respect of which an offence alleged to have been committed by the applicant are pending before a criminal Court in India and since no criminal proceedings were pending against the petitioner, non-issuance of passport to the petitioner was contrary to the statutory provisions of Section 6 (2) (f) of the Passports Act, 1967, besides also being contrary to the aforesaid two judgments passed by this Court.

Learned counsel further submitted that it was also stated so in the impugned order that while applying for the passport the petitioner had suppressed material information with regard to FIRs registered against him. He submitted that there was no disqualification qua the petitioner when the FIRs are only at the stage of investigation and in this regard, he referred to a judgment of this Court in *Sukhdeep Singh Versus Union of India and another [2021(4) PLR 529]* wherein the passport of the petitioner of that case was impounded and in that case a Co-ordinate Bench of this Court observed that even if for the purpose of impounding of the passport a specific provision has been so stated in Section 10(3) but since under Section 6(2) (f), the pendency of an FIR is insignificant, this Court had held that the same principle will apply for impounding of the passport also. However, the present case is not pertaining to impounding of the passport but it is a case of non-issuance of passport under Section 6(2) of

the Passports Act, 1967 and therefore, the case of the petitioner is at much better footing as compared to the aforesaid judgment in the case of *Sukhdeep Singh Versus Union of India and another (Supra)*. He submitted that none of the conditions under Section 6(1) or (2) of the Passports Act have been violated by the petitioner and therefore, the reasoning given by the Passport Authorities vide impugned order (Annexure P-3) was not only against the facts but also against the law.

He also submitted that there were total 12 FIRs against the petitioner and even as per the State, he has already been acquitted in 10 FIRs and so far as the aforesaid two FIRs are concerned, the State of Punjab has already filed an affidavit before this Court dated 28.09.2022 which was filed by the Senior Superintendent of Police, Gurdaspur wherein the status of the aforesaid two FIRs have been mentioned. He submitted that the SSP has so submitted in the affidavit that so far as the FIR No.139 dated 14.12.2015, under Sections 341, 117, 147, 151, 120-B IPC and Section 8-B of National Highway Act, 1956 is concerned, the police had already filed cancellation report before the learned Chief Judicial Magistrate, Gurdaspur and the same has been so accepted by the learned Chief Judicial Magistrate, Gurdaspur on 29.08.2017. He submitted that once the FIR which has been so mentioned in the impugned order i.e FIR No.139 dated 14.12.2015, under Sections 341, 117, 147, 151, 120-B IPC and Section 8-B of National Highway Act, 1956 is concerned, the same has already been cancelled by the police much prior to the passing of the impugned order, there was no occasion for the Passport Authorities to have referred to that FIR which did not exist after the cancellation report was accepted by the

learned CJM, Gurdaspur and therefore, the impugned order was totally cryptic and unjustified.

Further referring to FIR No.151 of 2015, under Sections 124-A, 153-B, 115, 117, 120-B IPC and Section 13 (1) of Unlawful Act, 1967, Police Station Chatiwind, District Amritsar, learned counsel again referred to the affidavit filed by the SSP who has so stated in his affidavit that with respect to this FIR as well, cancellation report was filed by the police itself before the concerned Court but that cancellation has not since been accepted by the learned Court and the matter has now been sent to the police for re-investigation. He submitted that in this way even as per State of Punjab, there is only one FIR against the petitioner which is still at the investigation stage and no challan has been presented before the Court against the petitioner and therefore that itself cannot become a ground for non-issuance of passport to the petitioner.

He further submitted that in view of Section 6 of the Passports Act, an order has to be passed by the concerned Passport Authorities either for accepting of the application for passport or declining /refusing the same but a bare perusal of the impugned order would show that it only stated that the office of the Passport Authorities is not in a position to issue passport but nowhere it has been so observed by the Passport Authorities that the same has been refused. He submitted that in view of the aforesaid position, the impugned order (Annexure P-3) is liable to be set aside and quashed.

Mr. Amit Sharma, Advocate appearing on behalf of respondent-Passport Authorities has submitted that after the impugned order was passed

the petitioner was asked to furnish three personal particulars forms with three passport size photographs with cross signature duly filled in all respects so that the case can be further processed and in this regard, a letter was issued to the petitioner dated 04.11.2022 and in pursuance thereof, he has already furnished the aforesaid documents to the Passport Authorities which are therefore still in process and has submitted that the matter with regard to grant or non-grant of passport to the petitioner shall be now considered by the concerned Passport Authorities within a period of four weeks from today.

Mr. Akshita Chauha, learned Deputy Advocate General, Punjab has submitted while referring to the reply filed by the State of Punjab through SSP, Gurdaspur that it is correct that the petitioner is facing only one FIR i.e. FIR No.151 dated 12.11.2015, under Sections 124-A, 153-A, 153-B, 115, 117, 120-B IPC, Section 13(1) of Unlawful Activities Prevention Act, 1967, and Section 66-F of Information Technology Act, Police Station Chatiwind, District Amritsar in which the police itself had filed cancellation report before the concerned Court but the same has been referred back for re-investigation and it is also correct that so far as FIR No.139 of 2015, under Sections 341, 117, 147, 151, 120-B IPC and Section 8-B of National Highway Act, 1956 is concerned, the cancellation report has already been accepted by the CJM, Gurdaspur.

I have heard the learned counsel for the parties.

The petitioner has filed the second round of litigation seeking issuance of passport from the Passport Authorities. Earlier petition was disposed by this Court vide Annexure P-2 whereby a fresh application was

filed by the petitioner and in pursuance of the same, the impugned order has been passed. The facts of the present case are not in dispute. Admittedly, the petitioner was facing only one FIR at the time of passing of the impugned order dated 31.01.2018 and in that FIR i.e. FIR No.151 of 2015, under Sections 124-A, 153-B, 115,117, 120-B IPC and Section 13 (1) of Unlawful Activities (Prevention) Act, 1967, Police Station Chatiwind, District Amritsar, the challan has not been presented against the petitioner and rather cancellation report was filed by the police which was however not accepted by the Court. Therefore at the time of passing of the impugned order there was only one FIR pending against the petitioner in which challan was not presented against petitioner. A perusal of Section 6 of the Passports Act would show that mere pendency of an FIR itself is no ground for refusal or non-issuance of passport to the applicant. This Court had also occasioned to deal with an identical issue in the case of ***Daler Singh Vs. Union of India and others(Supra)*** and ***Sahib Jaskaran Singh Versus Union of India and others(Supra)***. So far as allegation of suppression of facts pertaining to FIRs at the time of application filed by the petitioner is concerned, Section 6 does not lay down any ground that on the basis of suppression of pendency of an FIR, a passport can be refused. So far as suppression in case of impounding is concerned, Section 10 deals with the same but a Co-ordinate Bench of this Court in ***Sukhdeep Singh Versus Union of India and another(Supra)*** also dealt with this issue that even in that case as well, the suppression of FIR itself cannot become a ground for impounding of the passport. However, the present case does not pertain to impounding of the passport but it pertains to grant/issue of

passport and therefore, the case of the petitioner is governed by Section 6 of the Passports Act. A perusal of the impugned order would show that the petitioner has not been issued passport because of pendency of the FIRs. So far as FIR No.139 of 2015, under Sections 341, 117, 147, 151, 120-B IPC and Section 8-B of National Highway Act, 1956 is concerned, the reasons were totally incorrect in view of admitted position that prior to the passing of the impugned order, the said FIR has already been cancelled and accepted by the CJM, Gurdaspur on 29.08.2017. So far as FIR No.151 of 2015, under Sections 124-A, 153-B, 115, 117, 120-B IPC and Section 13(1) of Unlawful Activities (Prevention) Act, 1967 Police Station Chatiwind, District Amritsar is concerned, admittedly challan has not been presented by the police against the petitioner and it is only at the investigation/re-investigation stage. Therefore, the grounds on the basis of which he has not been granted the passport are not only unsustainable but they are also contrary to the provisions of Section 6 of the Passports Act and also contrary to the judgments of this Court in *Daler Singh Vs. Union of India and others(Supra)* and *Sahib Jaskaran Singh Versus Union of India and others (Supra)*.

During the course of arguments, learned counsel for the respondent-Passport Authorities stated that even after the passing of the impugned order, the case of the petitioner is still under consideration and decision will be taken within a period of four weeks from today.

Therefore, this Court is of the view that so far as the impugned order is concerned, the same is unsustainable and is liable to be set aside and quashed in view of the aforesaid reasons.

Consequently, the present petition is partly allowed. The impugned order dated 31.01.2018 (Annexure P-3) is hereby set aside and quashed. Since the petitioner has now submitted fresh particulars as required by the Passport Authorities vide their letter dated 04.11.2022, respondent No.2 is hereby directed to take a fresh decision on the original application filed by the petitioner on 08.01.2018 within a period of four weeks from today.

Needless to say that before passing the fresh order by respondent No.2, the petitioner shall be granted personal hearing by fixing a date and appointment with the Regional Passport Officer, Jalandhar. Thereafter, the order which is to be passed by the Regional Passport Officer, Jalandhar shall be well-reasoned speaking order especially in the light of the *aforesaid two judgments i.e. Daler Singh Vs. Union of India and others(Supra)* and *Sahib Jaskaran Singh Versus Union of India and others (Supra)*.

It is made clear that the order shall be passed strictly in accordance with law and uninfluenced by the earlier impugned order which has been passed vide Annexure P-3.

24.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No