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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23rd March, 2023

+ W.P.(C) 800/2023 and CM APPL. 11129/2023

MASTER PRAKALP SHARMA

..... Petitioner

Through: Mr. Sumit Bansal, Mr. Rajnish Gaur,
Mr. Tushar Sahu & Ms. Divya Rana,
Advs. (M: 7355051564)

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Mukul Singh, CGSC with Mr
Vedansh Anand, GP & Ms Ira Singh,
(Adv) for R-1. (M: 9971359512)
Mr. U.K Sharma, Ms. Urmil Sharma
for R- 3 (M-9810678496) with R-3 in
person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Master Prakash Sharma seeking directions to the Respondents to allow the petitioner to apply for a fresh passport through his mother Ms Kritika Kaushik, as a single parent, before the Respondent No. 2 – the Embassy of United States of America, Consular Section.
3. The Petitioner is a two years old minor child who is autistic and has filed the present petition through his mother who is his guardian. The Petitioner is stated to be born in the USA on 10th March, 2020 when his parents were living there. In October, 2021 some matrimonial issues arose

between the Petitioner's Parents.

4. Respondent No.3 – *Mr. Sankalp Sharma* who is the Petitioner's father continues to work in USA, in the Government Employees Insurance Company (GEICO).

5. The case of the Petitioner is that he was born in the USA and was issued an American passport. However, the said passport was allegedly taken away by the Respondent No.3. When the Petitioner applied for a fresh passport through his mother, the Respondent No. 2 – U.S. Embassy, refused to issue the passport to the Petitioner without consent from the Petitioner's father – Respondent no.3, or a US Court order permitting the single parent to apply for the child's passport or a Court order granting sole legal custody to the mother/single parent. The operative part of the communication of the US Embassy dated 26th July 2022 is as under:

"Since application was only signed by one parent/guardian, it was required to submit one of the following:

- A notarized statement of consent including the child's full name and date of birth and listing the non-applying parent's/guardian's relationship to the minor, along with a copy of front and back of a photo identification from the non-applying parent/guardian authorizing passport issuance for the child. Limited or qualified consent statements are not acceptable. (The nonapplying parent may use the enclosed DS-3053, Statement of Consent: Issuance of a us. Passport to a Minor Under Age 16); or*
- A court order specifically permitting the applying parent/guardian to apply for the child's U.S. passport; or*
- A court order granting sole legal custody to the applying parent/guardian (unless the child's travel is restricted by that order).*

You were unable to submit any of the above listed documents. Therefore a U.S, passport cannot be issued to Prakalp at this time, and your son's application is denied. Vie will consider any evidence you may provide in the future. However, you will need to file a new application, submit all evidence and pay the appropriate fees. By law, the passport execution and application fees are non-refundable.”

6. The mother of the Petitioner is currently residing in Delhi and is intending to undertake her studies in MBA in Boston, USA. The Petitioner is under the continuous care and supervision of his maternal grandparents (*nana and nani*).

7. The prayer is for direction to the Respondent No. 2 for issuance of a fresh passport considering the unique facts and circumstances of this case.

8. In the present petition, on 23rd January, 2023 notice was issued to the Respondent No.3 at his parental address at Ghaziabad. However, none appeared on the next date of hearing i.e. on 23rd February, 2023 for the Respondent No.3. Accordingly, the following order was passed:

“2. None appears for the father of the Petitioner i.e. Respondent No.3 - Mr. Sankalp Sharma despite service, by both Respondent No.1 - Ministry of External Affairs (MEA), Union of India as also by this Court.

3. Clearly, the Respondent No.3 does not wish to cooperate in the issuance of passport to his minor child and that is quite an unfortunate circumstance.

4. In the meantime, Mr. J.S. Dua, Consultant, MEA, who is dealing with the Respondent No. 2 - Embassy of United States of America is directed to communicate a copy of this order along with a copy of the previous order dated 2nd January, 2023 with a request on behalf of the Petitioner to the Embassy. He shall take up this case with the

Embassy and file a status report by the next date of hearing.

5. List on 23rd March, 2023.”

9. Immediately thereafter, an application was moved by the Respondent No.3 for bringing on record the facts regarding his non-appearance in the matter on the last date of hearing. The said application was listed on 7th March, 2023 on which date it was submitted on behalf of the Respondent No.3 that he is willing cooperate for obtaining the USA passport for the Petitioner.

10. Today, Ms. Urmil Sharma, Id. Counsel appearing for the Respondent No.3 submits that there are few apprehensions that the Respondent No.3 has and the same are as under:

(i) That for obtaining the American passport, the Petitioner should not be treated as a child of a single parent and the name of the father should appear in the passport;

(ii) that after reaching the USA, the Petitioner's location should be disclosed to the Respondent No.3;

(iii) that while the Petitioner's mother is studying at Boston university, the Respondent No.3 should be permitted to visit the Petitioner and vice-versa.

(iv) The Petitioner should not be removed from the USA, without the permission of the Respondent No.3 or a competent US court.

11. Subject to the above, the Respondent No.3 is willing to cooperate with the issuance of the passport to the Petitioner and sign all the necessary forms regarding the same.

12. It is noted that the Petitioner's mother has filed a domestic violence

case in India and the Respondent No.3 has filed divorce proceedings in the US. Both the parties are contesting each other's litigations.

13. On behalf of the Petitioner, it is submitted that the proceedings are already going on between the Petitioner and the Respondent No.3 in the US. Currently, the child is staying with the maternal grandparents i.e. *nana* and *nani* because of the non-issuance of no objection by the Respondent No.3. It is submitted that if the Respondent No.3 is willing to issue a statement of consent and other required documents for issuance of the USA passport of the child, the Petitioner has no objection in abiding by the four conditions, which are recorded above, subject to orders of the competent courts in the US.

14. The Court has heard the Id. Counsels for the parties. The purpose of the present writ petition was to obtain a passport for the petitioner. Since the father of the Petitioner has agreed to cooperate with the Petitioner's mother for issuance of a US passport, subject to certain conditions as enumerated above, which are acceptable to the Petitioner's mother, the following directions are issued:

- (i) Ld. Counsel for the Petitioner shall communicate to the Id. Counsel for the Respondent No.3 all the required documents, which are to be executed by the Respondent No.3 within one week.
- (ii) Upon the said documents including the statement of consent being received, the same shall be filled, signed and returned to the Petitioner for submission to the US Embassy.
- (iii) Upon receiving of the documents including the statement of consent, the Petitioner is free to apply for a fresh passport.

- (iv) The Petitioner shall travel to USA along with the child and shall not remove the child from USA, without permission of the competent courts in USA.
- (v) The Respondent No.3 shall also be allowed to visit the child and vice versa.

15. Both parties shall abide by the orders passed by competent courts as also the present order.

16. The petition, along with all pending applications, is disposed of.

17. Copy of this order be communicated to the US Embassy through Mr. J.S.Dua, Consultant MEA, who is dealing with the Respondent No. 2 - Embassy of United States of America.

MARCH 23, 2023

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PRATHIBA M. SINGH, J.

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