

D/L. 27.  
January 3, 2024.  
MNS.

WPA No. 27965 of 2023

Gopinath Majumdar  
Vs.  
Union of India and others

Mr. Soumava Mukherjee,  
Mr. Subhankar Chatterjee

... for the petitioner.

Mr. Kumar Jyoti Tewari,  
Mr. Tanunjyoti Tewari

...for the respondent authorities.

1. Learned counsel for the petitioner submits that the petitioner's application for re-issuance of his passport was turned down by the respondent authorities.
2. The present writ petition has been preferred against such action of the respondent authorities.
3. Learned counsel for the respondent authorities places reliance on a Notification issued by the Ministry of External Affairs, Government of India, bearing GSR 570(E) dated August 25, 1993 in terms of which a citizen of India against whom proceeding in respect of offences alleged to have been committed is pending before a criminal court

in India is exempt from the operation of Section 6(2)(f) of the Passport Act, 1967 ("the 1967 Act"), only if such citizen obtains an order from a jurisdictional criminal court permitting the said petitioner to travel abroad.

4. It is further contended that the petitioner was arrested in connection with a criminal case under the NDPS Act. The petitioner, while being enlarged on bail, was directed by the Division Bench granting the bail to attend the court below on all the dates as specified for hearing.
5. As such, it is submitted that the said rider, unless clarified or modified, prevents the petitioner in any event from obtaining a passport to travel abroad. It is further argued that while applying for re-issuance of passport, the petitioner deliberately suppressed the fact of pendency of the criminal case against him for which already a show cause notice has been issued against the petitioner as to why steps should not be taken to impound the passport of the petitioner under Section 10(3) and Section 12(1)(b) of the 1967 Act.

6. Hence, the respondent authorities oppose the prayer of the petitioner.
7. Upon hearing learned counsel for the parties, it transpires that the respondent authorities are justified in arguing that a condition was imposed while granting bail to the petitioner vide order dated January 17, 2022 in CRM 8368 of 2021 by a Division Bench of this Court to the effect that the petitioner shall attend the court below on all the dates as specified for hearing. However, the subsequent paragraph in the said order stipulates that in the event the petitioner fails to comply with the said directions “without any justifiable cause”, the trial court would be at liberty to cancel the bail without any further reference to this Court.
8. Thus, as a corollary and consequence of the petitioner flouting the order for attending each date of trial, the trial court was given the liberty to cancel the bail. However, the stipulation that the petitioner would not flout the said condition “without any justifiable cause” leaves a small window for consideration by the jurisdictional criminal court as to whether it would be justified to grant the petitioner leave to travel abroad. If

so granted, the same could be arguably a “justifiable cause” for the petitioner not attending each date of trial. However, such consideration entirely depends upon the jurisdictional criminal court and it would be premature to enter into such issue at this stage.

9. In any event, since the respondents have issued a show cause notice against the petitioner within the contemplation of the 1967 Act, nothing in this order shall interdict or affect adversely the said proceeding, if at all initiated.
10. However in terms of the Notification dated August 25, 1993, if the petitioner is able to obtain an order from the jurisdictional criminal court, the passport authorities are duty-bound to consider the same and re-issue the passport, of course subject to any steps, if taken subsequently under Section 10(3) or Section 12 of the 1967 Act.
11. Accordingly, WPA No. 27965 of 2023 is disposed of by granting liberty to the petitioner to approach the jurisdictional criminal court where the criminal trial against the petitioner is going on for obtaining an order within the

contemplation of Notification No. GSR 570(E) dated August 25, 1993 to get an exemption from Section 6(2)(f) of the 1967 Act. If so approached, the jurisdictional criminal court shall decide the said application as expeditiously as possible, preferably within a fortnight from the petitioner making the same, and pass an order thereon.

12. In the event permission is given to the petitioner by the jurisdictional criminal court to travel abroad, the petitioner will be at liberty to approach the respondent authorities for re-issuance of his passport.

13. In such event, the said request shall be processed by the respondent authorities at the earliest.

14. However, it is made clear that the above directions shall be completely subject to the outcome of the any proceeding if initiated by the respondent authorities against the petitioner under Section 10 or Section 12 of the 1967 Act.

15. Nothing in this order touches on the merits of the allegations made against the petitioner either the criminal proceeding or in the contemplated proceeding to be initiated

against the petitioner, if at all, by the respondent authorities under the 1967 Act.

16. There will be no order as to costs.

17. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)