

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 653 OF 2020

Ellyas Mohammad Gause Momin,
Age:52 yrs, Occupation: Service,
Residing at: 401, Al-Safa Co-op. Hsg.,
4th Floor, 32, Ghorpade Peth,
Pune – 411 042

... Petitioner

Versus

1. The Union of India,
Sr. Central Government Advocate,
Ministry of Law & Justice,
Branch Secretariat,
Ayakar Bhavan, 2nd Floor, Mumbai
Through The Regional Passport Officer,
Passport Bhawan, Sr. No. 5/2/2,
Baner – Pashan Link Road, Baner,
Pune – 411016.

2. The Joint Secretary & Chief Passport
Officer, PSP Division,
Patiala House Annexe, Tilak Marg,
New Delhi – 110001.

3. The State of Maharashtra,
Through P.S.O. Police Station,
Khadak, Pune

... Respondents

Mr. Mubin Solkar a/w Ms. Tahera Qureshi, Mr. Tahir Hussain,
Mr. Anas Shaikh and Mr. Hemal Shah for the Petitioner

Mr. D. P. Singh for the Respondent No.1-UOI

Mrs. P. P. Shinde, A.P.P for the Respondent No.2-State

API Mr. Nitinkumar Naik from Khadak Police Station, Pune City, is present in Court

**CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.
MONDAY, 15th APRIL 2024**

ORAL JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Mr. Singh, learned Spl. P.P. waives service on behalf of the respondent No.1-UOI and Mrs. Shinde, learned A.P.P waives service on behalf of the respondent No.2–State.

3 By this petition, preferred by the petitioner under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner seeks the following substantive reliefs :

“a) To direct the Respondent No. 1 to issue fresh passport to the Petitioner, having validity of 10 years;

b) To quashing and set aside order dated 13.09.2019 passed by the Regional Passport Office at Pune i.e. Respondent No.1 refusing issuance of Passport to Petitioner and order dated 10.01.2020 passed by the Office of Joint Secretary (PSP) & Chief Passport Officer, i.e. 2nd Respondent not allowing the Petitioner Appeal bearing No. VIII/402/App-158/2019, in the interest of justice.”

4 Mr. Solkar, learned counsel for the petitioner submits that not a single case is pending against the petitioner, the petitioner having been acquitted in all the seven cases that were registered against him, the last acquittal order being of 28th July 2017. Mr. Solkar, learned counsel for the petitioner submits that pending cases, the petitioner was issued passport for 1 year on 29th October 2012; for 1 year on 23rd September 2013 and post his acquittal, for 1 year on 1st October 2018. He submits that the passport authorities have now rejected the petitioner’s passport only because of an adverse report given by the police. He submits that there was no justification for the police to give

an adverse police report against the petitioner, more particularly, when there was not a single case pending against the petitioner, after his acquittal in 2017. He submits that even the reference to the petitioner being present at a Press Conference in Pune at Jakartan Bhavan on 22nd September 2022 to protest against the actions taken by the National Intelligence Agency (`NIA'), Anti Terrorist Squad (`ATS') and Enforcement Directorate (`ED'), is out of context, inasmuch as, the Popular Front of India (`PFI') was admittedly not a banned organization, when the Press Conference was held and that PFI was banned only on 27th September 2022, pursuant to a Notification issued by the Government. He submits that the police have not registered a single case against the petitioner, post his last acquittal in 2017 and as such, there was no justification for the police to give an adverse police report, only because the petitioner was present at a Press Conference on 22nd September 2022, prior to the PFI being banned.

5 Learned A.P.P opposes the petition. Learned A.P.P has filed an affidavit of Shri Rakesh Jadhav, Assistant PI attached to Khadak Police Station, Pune dated 15th June 2023. Learned A.P.P submits that the petitioner had participated in the Press Conference held by PFI. It is further stated that if passport is re-issued to the petitioner, he will leave India and will join the PFI.

6 Perused the petition. The petitioner is a citizen of India, residing in Pune with his family. It appears that the petitioner is a Post Graduate in Computer Application and is also certified in Multiple Domain i.e. Databases, Fusion, Middleware Unix Base Operating System, Cloud Computing and implementation. It appears that the petitioner, at the time of filing of the petition, was working as a Technical Manager-Oracle Apps, with ISON Technologies Pvt. Ltd., having its office at Gurgaon, Haryana. According to the petitioner, considering his expertise in Information Technology, he is required to travel

frequently to other countries to render services. Mr. Solkar submits that the petitioner, in order to render his services in connection with his profession, has travelled overseas i.e. UAE (Abu Dhabi) and KSA (Riyad) from October 2018 to March 2019, on 9 occasions, in connection with the IT projects. It is submitted that none of the countries have ever denied Visa to the petitioner. It also appears that in 2012, the petitioner visited Saudi Arabia for performing Hajj, as permitted by the Trial Court. It is not in dispute that in all the seven cases registered as against the petitioner during the period 1998 to 2001, the petitioner has been acquitted, the last order of acquittal being of 27th July 2017. It is also not in dispute that pending trial, on 2 occasions i.e. on 29th October 2012 and on 23rd September 2013, the Passport Office had issued passports to the petitioner for 1 year on both the occasions, pursuant to which, the petitioner travelled overseas, on certain terms and conditions stipulated in the orders passed by the Courts. It is also not in dispute that on 1st October 2018, the passport authorities had issued the

petitioner a passport for one year and that the petitioner during the said period, travelled overseas i.e. post his acquittal, in all the cases.

7 It appears that the petitioner filed an application seeking passport for 10 years on 22nd May 2019, however, the passport authorities rejected the petitioner's passport on 13th September 2019 citing adverse police report. The said order was challenged by the petitioner before the Appellate Authority and that the Appellate Authority vide order dated 10th January, 2020 dismissed the petitioner's appeal, also citing adverse police report.

8 The respondent No.1–Dr. Arjun Deore, Regional Passport Officer, Pune, has filed his affidavit dated 27th September 2023. In the said affidavit, the respondent No.1 has not denied issuance of passport earlier to the petitioner. It is stated that the petitioner's application dated 22nd May 2019 was

rejected on the basis of adverse police verification report, as received from the police. It is further stated in para 7 of the said affidavit that the petitioner may again submit fresh application for re-issuance of passport and if submitted, it shall be considered on its merits, subject to a clear police verification report from the concerned authority and in accordance with the Passport Act and the Rules thereunder.

9 The Assistant Police Inspector Shri Rakesh Jadhav attached to Khadak Police Station has also filed his affidavit dated 15th June 2022. In para 8 of the said affidavit, it is stated that the petitioner was present at a Press Conference held at Jakartan Bhawan on 22nd September 2022, in order to protest against the action taken by NIA, ATS and ED and that in the said Press Conference, the petitioner had made a speech supporting the PFI. It appears that after the said Press Conference, a protest was held at the District Collector's Office on 23rd September 2022. Admittedly, the petitioner was not present in the said protest

held, when it is alleged that the protesters gave anti India slogans. Admittedly, no case has been registered against the petitioner, pursuant to the Press Conference, nor is it the case of the police that the petitioner was present at the time of the protest, which was held on 23rd September 2022. It is also not in dispute that PFI was banned pursuant to a Government Notification dated 27th September 2022, post the Press Conference at which the petitioner was present. As noted above, not a single case has been registered against the petitioner post 2001, till date.

10 It also appears from the record that the petitioner has travelled overseas pending trial as well as post his acquittal from the said cases, on terms and conditions as stipulated in the said orders. It is not the case of the respondent police that the petitioner has flouted any of the said conditions or that he has not abided by the terms and conditions stipulated in the said orders. It appears that respondent No. 1 has denied passport to the petitioner, only on the basis of the adverse police report.

11 As noted above, not a single case is pending against the petitioner and in all the earlier cases, the petitioner has been acquitted of the offences, way back as in 2017. Not a single case has been registered against the petitioner, post 2001. As noted above, the petitioner has travelled overseas on several occasions. Also as noted above, at the time when the Press Conference was held, the PFI was not a banned organization and as such, the police have also not prosecuted the petitioner for being present at the Press Conference.

12 Considering the aforesaid, the petition is allowed on the following terms and conditions :

- (1) We direct the respondent No.1 to issue a fresh passport to the petitioner on a fresh application being made by the petitioner in accordance with the Passport Act and the Rules thereunder, for a period of 2 years.

(2) We direct the respondent No.3-Khadak Police Station, Pune, to give a clear police verification report to the passport authority, considering that not a single case is pending against the petitioner and considering what is observed herein-above.

13 Petition is disposed of on the above terms. Rule is made absolute accordingly.

14 All concerned to act on the authenticated copy of this judgment.

MANJUSHA DESHPANDE, J. REVATI MOHITE DERE, J.