

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1221 OF 2024

Sudhakar Dnyaneshwar Khade & Anr.

... Petitioners

Versus

The Union of India & Ors.

... Respondents

Mr. Pratik Irpatgire, for the Petitioner.

Ms. Ashutosh Mishra, for Respondent No.1/UOI.

Mr. A. C. Bhadang, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 21 FEBRUARY, 2024

P.C.

1. Heard learned counsel for the parties.
2. This petition under Article 226 of the Constitution of India assails the communication dated 11 August 2023 as placed by respondent No.2 / Regional Passport Officer, Pune directing the petitioner to obtain from the Sessions Court an order / NOC for issuance of the passport.
3. It appears from the averments as made in the petition that the petitioner is an accused in Session Case No.132 of 2014 pending before the Sessions Court at Sangli. The charge against the petitioner is under Section 375 of the Indian Penal Code.
4. It is on such backdrop, the petitioner approached the passport authority for issuance of passport. The impugned communication has been issued to the petitioner. It appears from the reply affidavit as placed on record that the

insistence of the passport authority for an order to be obtained by the applicant for the passport is in consonance with the notification issued by the Government of India, Ministry of External Affairs dated 25 August 1993. The said notification reads thus:

“Ministry of External Affairs
Notification
New Delhi, the 25th August, 1993

G.S.R. 570(E)---In exercise of powers conferred by clause (a) of section 22 of the Passport Act 1967 (15 of 1967) and in suppression of the notification of the Government Of India in the Ministry Of External Affairs No. G.S.R. 298(E) dated the 14th April, 1976, the Central Government being in the opinion, that it is necessary in public interest to do so, hereby exempt 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 Claus(1) of Sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

- (2) 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 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 such permission to travel abroad for a period less than one year, but does not specify the period validity of passport, the passport shall be issued for one year or,
 - (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 traveled 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 passport or specifying the 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.

[No. VI/401/97/790
L.K. PONAPPA, Jt. Secy. (CPV)]

(emphasis supplied)

5. Such notification being issued in exercise of powers under Section 22(a) of the Passport Act, 1967 takes into consideration the provisions of Section 6(2)(f) which provides that subject to other provisions of the Act the passport authority in a given case 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 grounds set out in clauses (a) to (i), one of the clauses being clause (f) stipulating that proceeding in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India. Section 6 of the Passport Act, 1967 reads thus:

“6. Refusal of passports, travel documents, etc.-(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or 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) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(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) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

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

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

(emphasis supplied)

6. Admittedly, neither the notification nor the provisions of the Passport Act are assailed by the petitioner nor it has been pointed out that the same are not valid in law. Thus, what has been stipulated by the said provisions and the notification dated 25 August 1993, becomes squarely applicable. Hence, there would be nothing wrong or illegal for the passport authority to insist that the petitioner obtains appropriate orders from the Criminal Court. For such reason, we are not inclined to entertain this petition.

7. At this stage, it is informed by the learned counsel for the petitioner that the petitioner has already approached the concerned Sessions Court and the

application for such orders / permission for issuance of a passport is pending before such Court and it is not being decided for quite sometime.

8. In these circumstances, we direct the Sessions Court to consider the petitioner's application, if so on its record, and pass appropriate orders within a period of two weeks from the day the order of this Court is presented before the Sessions Court.

9. All contentions of the parties are expressly kept open.

10. The petition stands dismissed with the above observations.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)