



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION No.922 OF 2024

Md. Muzzammil Waqarul Hussain
s/o. Waqarul Hussain,
Aged about 23 years,
Occupation : Assistant Engineer,
R/o. Near Ya Allah Masjid, Firdos Colony,
Akola-440 001.
At present R/o. H26, Hi Tech Birla Carbon Township,
Verkadu Village, Gummidipoondi 601201
(State of Tamil Nadu) : PETITIONER

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Ramdaspath, Akola,
Distt. Akola.
2. Superintendent of Police, Akola,
District – Akola.
3. Regional Passport Officer,
Regional Passport Office, Nagpur,
CGO Complex, B-Block,
Seminary Hills, Nagpur 440 006. : RESPONDENTS

Mr. T.A. Mirza, Advocate for Petitioner.
Mr. A.B. Badar, Addl. Public Prosecutor for Respondents Nos.1 and 2.
Mr. N.S. Deshpande, D.S.G.I. for Respondent No.3.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 09th DECEMBER, 2024.

ORAL JUDGMENT : (Per : Nitin W. Sambre, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel Advocates appearing for the parties.
2. The petitioner is a qualified person holding B. Tech. degree and employed with Aaditya Birla Carbon India Private Limited as an Assistant Manager vide order dated 30th September, 2024.
3. The prayer for issuance of passport is rejected by the respondent No.3 - Passport Authority on the ground of an adverse Police report. The order impugned is issued by the Passport Authority on 17th May, 2024. The Police report, which is placed on record, speaks of involvement of the father and uncle of the petitioner, who were active members in SIMI banned organization and the pendency of prosecution against them in number of criminal matters.
4. The counsel for the respondent No.3 Mr. N.S. Deshpande would submit that the petition is not maintainable, as the petitioner has an alternate remedy of preferring an appeal under Section 11 of the Passports Act, 1967.
5. As against the claim of the petitioner, the learned Additional Public Prosecutor would invite our attention to the Police report so as to claim that since the parents of the petitioner are having criminal antecedents, he carrying the same mentality cannot be ruled

out and as such the Police report was issued questioning the claim of the petitioner for issuance of Passport.

6. We have considered the submissions.

7. The objection is raised by the counsel for the respondent No.3 on the issue of alternate remedy but the petitioner, who is admittedly a citizen of India has every right to move not only within the territory of India but also has a statutory right to have the Passport issued to him. In such an eventuality, the claim of an alternate remedy will not operate as an embargo on the right of the petitioner.

8. Apart from above, from the perusal of the Police report it is noticed that there are no criminal antecedents against the petitioner, who is an educated person.

9. Merely because, the Police Authorities are claiming that the father of petitioner viz. Waqarul Hussain and his uncle Ehteshyam Husain wald Muzfar Husain were ex-workers of the prohibited SIMI organization, the petitioner in case is granted Passport can misuse the same cannot be sustained.

10. The fact remains that it is not the case of the Police Authorities that the father of the petitioner is at present working for SIMI as it is in the Police report specifically referred to as ex-workers of SIMI banned organization.

11. That being so, the adverse Police report given against the

petitioner, there is no live-link to infer that the petitioner will indulge in criminal activities and misuse the Passport granted to him in absence of any criminal antecedents.

12. The fact remains that the petitioner, who has graduated from a prestigious Institute i.e. Vishwakarma Institute of Technology, Pune is intending to apply for foreign placement for which he is in need of Passport.

The police verification report at Annexure R-3B reflects that the investigation about the petitioner was carried out on 20.06.2023 and 29.06.2023. The petitioner was found to be a citizen of India and it is further noticed that the petitioner is not facing any criminal charge in the Court or convicted in any crime during the last five years or is sentenced to imprisonment. Similarly, it was noticed that there was neither a pending warrant or summons issued by any Court nor any Court has made any order prohibiting his departure from India. However, it is observed in the said order as under :

“Has the applicant indulged or likely to indulge in activities which are prejudicial to the sovereignty and integrity of India, the security of India, friendly relations of India with foreign country or the interests of the general public – Yes”

13. As such, the petitioner’s file was not cleared by the Police Authorities thereby recommending non-issuance of passport. The

police verification conclusion is as under :

“The above passport applicant is son of Waqarul Hussain and his uncle Ehteshyam husain wald Muzfar Husain both are Ex worker prohibited SIMI organization possibility off missuse cannot be ruled out if he gets the pass so do not issue a India Passport.”

14. Based on the aforesaid report, the petitioner was informed accordingly that adverse police verification report was received and as such for the security of the Nation, it was proposed not to issue an Indian passport to the petitioner. As such, he was called upon to provide suitable explanation within thirty days alleging that the petitioner has suppressed the material information in the passport application.

15. The petitioner accordingly submitted his explanation on 06.07.2023 submitting that he is not involved in any anti-national or anti-social criminal activity. It is claimed that he is not related to any political or religious party.

16. On 17.05.2024, the respondent no.3 had noted that the response submitted by the petitioner to the show cause notice was found not satisfactory and accordingly the application was rejected thereby denying the issuance of passport.

17. The important point which this Court must observe is that if the petitioner was served with show cause notice, the material

perhaps was not made available to him which was made the basis for passing the impugned order. Apart from above, the impugned order does not reflect that the explanation tendered by the petitioner was dealt with by applying its mind as in two words viz. 'not satisfactory', the respondent no.3 Passport Authority has refused to issue passport to the petitioner thereby denying his request. It is not at all disclosed by the Passport Authority as to how the police verification report can be considered adverse against the petitioner who is a highly educated person.

18. The Division Bench of this Court at the Principal Seat in Dipak Nikalje Versus Union of India [AIR 2003 Bombay 255] has observed as under :

“7. This Court was not satisfied with the affidavit filed on behalf of the respondents therein and remanded the matter back to the Regional Passport Officer, Mumbai for hearing the petitioner before passing an order on his application for grant of passport facility. The petitioner, indeed, was heard but for the selfsame reasons, the petitioner's application for issuance of passport and the passport facility was rejected. The order passed by the Regional Passport Officer on 9th October, 2000 also, therefore, is not sustainable in law and cannot be maintained since there is no material against the petitioner which may justify denial of passport to him.

8. The question that arises now is what relief may be granted to the petitioner. Once we have held that the order passed by the Regional Passport Officer on 9th October, 2000 refusing passport facility to the

petitioner under Sections 6(2)(b) and 5(2)(c) and the order passed by the appellate authority on 8th June, 2001 under Sections 6(2)(i) and 5(3) are unsustainable, our initial reaction was to send the matter back to the Regional Passport Officer, Mumbai for reconsideration of the matter. On a deeper thought, however, we found that remanding the matter back to the Regional Passport Officer, in the peculiar facts and circumstances of the present case, may not subserve the ends of justice. It is not in dispute before us that the petitioner's application for issuance of passport and passport facility was refused solely on the ground that the petitioner's case was not recommended by the police authorities. The police authorities did not recommend the petitioner's case because the petitioner is the brother of one Chhota Rajan against whom various offences are registered. Insofar as the petitioner is concerned, it transpires from the affidavit of Mr. Joseph Siloo Main, Senior Inspector of Police, SB-II, C.I.D. that preventive action was taken under Section 56 of the Bombay Police Act externing him from Mumbai. The said externment order was never implemented as the petitioner submitted a bond of Rs. 25,000/- as required by the concerned police authority for his good conduct. There is absolutely nothing placed before us that during the period the bond of Rs. 25,000/- was in force for the period from 5-1-1995 to 4-1-1997 the petitioner misconducted or acted in breach of the terms of the bond. As a matter of fact, it is not in dispute before us that the bond of Rs. 25,000/- submitted by the petitioner for the good conduct was effective for the period from 5-1-1995 to 4-1-1997 and at the time of submission of the bond the petitioner was holding passport and no action whatsoever was taken against the petitioner for revocation or suspension of that passport or for impounding the said passport when the action was taken against the petitioner under Section 56 of the Bombay Police Act. The petitioner's application for issuance of passport facility was rejected earlier on 24th April, 2000 by the Regional Passport Officer and

the Appellate Authority on 13th June, 2000 but the said orders were not found sustainable by this Court. In the earlier writ petition filed by the petitioner challenging the said orders and despite the remand of the matter to the Regional Passport Officer, again the petitioner's application for issuance of passport has been rejected on unsustainable grounds. In the circumstances, we are of the view that in the instant case, it would be of no use remanding the matter back to Regional Passport Officer for consideration of the petitioner's application for issuance of passport facility. The authorities appear to us have failed to act in unbiased manner in considering the petitioner's application for issuance of passport facility in accordance and due conformity with law. Remitting the matter again to the same authorities who seem to have predetermined notion about the petitioner as he happens to be brother of a notorious gangster would be travesty of justice. In the backdrop of these facts and the manner in which respondent Nos. 2 and 3 have considered the matter on the application made by the petitioner for issuance of passport facility after the remand, we are satisfied that this is a fit and proper case where we should exercise our constitutional powers and issue appropriate direction to the Regional Passport Officer, Mumbai to issue passport facility to the petitioner. Incidentally we may note that the petitioner's wife and his two children (son and daughter) are holders of Indian passport and there is no material placed before us or referred that such passport has been misused by the petitioner's wife and his children. Mr. Manohar, learned senior counsel for the petitioner submitted that in the event of passport facility being granted to the petitioner, before undertaking travel to the foreign country, the petitioner shall inform Deputy Commissioner of Police Special Branch-II, C.I.D. Mumbai about the place and duration of foreign visit. He, however, submitted that such information may be directed to be kept secret and confidential by the police authorities. He also submitted that ordinarily the petitioner shall travel foreign country with his wife and children, save and

except in extra ordinary circumstances.”

19. The petitioner was served with the show cause notice dated 6th July, 2023 based on an adverse Police verification report. The criminal history about his parents is sought to be considered against him by inferring that, in case if the petitioner is granted Passport, same will be adverse to the interest of the security of nation, we hardly see any convincing reason particularly about the antecedents of the father to be considered against the petitioner, who is a highly educated person, which formed to be a basis for issuing the adverse Police report.

20. The adverse material about the father is sought to be considered against the son, in this case the petitioner, for the purpose of giving adverse Police report so as to deprive him of issuance of Passport.

21. Such act on the part of the respondent Nos.2 and 3 in our opinion cannot be sustained, as the approach can be termed as perverse. Apart from above, but for the alleged material against the father and uncle, there is no direct material available against the petitioner so as to infer that he has any criminal mind or antecedents. Even such material about adverse activity of father and uncle

considered by respondent No.3 was not made available.

22. That being so, the order impugned dated 17th May, 2024 is hereby quashed and set aside.

23. We direct the petitioner to appear before the respondent No.3 – Passport Authority on 19th December, 2024 so as to enable him to process his further request for issuance of Passport, which be issued expeditiously.

24. Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)