

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118 CRM-M-61062-2022
Date of Decision:19.03.2024

Gurarpan ChauhanPetitioner
Vs.
State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vivek Chauhan, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J. (ORAL)

By way of this petition filed under Section 482 Cr.P.C., petitioner has prayed to set aside the order dated 31.10.2022 (Annexure P-1) passed by learned Additional Sessions Judge, Ludhiana, whereby prayer of the petitioner for issuance/renewal of the passport of the petitioner for a period of 10 years was not accepted.

2. Short reply by way of an affidavit of Shri Nikhil Garg, PPS, Deputy Superintendent of Police, Sub-Division Payal, Police District Khanna, District Ludhiana has been filed on behalf of respondent- State.
3. On perusal of the paper-book, it emerges that petitioner is facing trial in case FIR No.72 dated 14.07.2023 registered at Police Station Doraha, Police District Khanna, Ludhiana under Sections 364-A, 307 of the IPC. During investigation, his passport bearing No. V-1706608 was impounded. Initially, said passport was released to the petitioner for a period

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of one year. Petitioner applied for renewal of the passport for a period of 10 years to the Trial Court concerned. Vide impugned order dated 31.10.2022, learned Additional Sessions Judge, Fast Track Special Court, Ludhiana though granted necessary permission for re-issuance/renewal of the same but the prayer for re-issuance/renewal for a period of 10 years was declined by observing that it is for the passport authority to see as to for how much period the same is to be issued.

4. Impugning the aforesaid order, learned counsel for the petitioner has referred to the notification dated 25th August, 1993 bearing No.G.S.R. 570(E) issued by Government of External Affairs, in exercise of its powers conferred by (a) of Section 22 of the Passports Act, 1967 in order to contend that it is the Court, which has to specify the period for which the passport is to be issued and in case no such period is mentioned, then the passport shall be issued for a period of one year. Learned counsel contends that in view of the said notification, it was for the Court concerned to specify the period for renewal of passport. It is further contended that petitioner deserves to be allowed the renewal of the passport for a period of 10 years.

5. In the short reply, the respondent- State has supported the impugned order. Learned State counsel contends that renewal/re-issuance of a passport is an issue primarily between applicant and the passport authority and therefore, no direction can be issued for re-issuance / renewal of the license for a period of 10 years.

6. I have considered submissions of both the sides and have perused the record carefully.

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7. Section 5 of the Passport Act, 1967 provides about the applications for issuance of the passport, travel documents etc. and orders which may be passed thereon; whereas, Section 6 of the Act provides for the refusal of passports, travel documents etc. Section 22 of the Act confers power upon the Central Government to exempt any person or class of persons from the operation of all or any of the provisions of the Act or the rules made thereunder. These provisions read as under:-

“5. Applications for passports, travel documents, etc., and orders thereon

(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

Explanation.- In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.]

(2) On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

- (a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

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- (b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or*
- (c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.*

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

6. Refusal of passports, travel documents. Etc.

- (1) xxxxxxxxxxxxxxxxxxxx
- (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) to (e) xxxxxxxxxxxxxxxxxxxx
 - (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) to (i) xxxxxxxxxxxxxxxxxxxx

22. Power to exempt

Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,-

- (a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and
- (b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.”

8. The aforesaid provisions make it clear that an application for

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issuance of a passport can be made to visit any foreign country (except a named foreign country). The passport authority can issue the passport or travel document with endorsement in respect of one or more of the foreign countries; and refuse to make endorsement in respect of other countries. Passport authority can even refuse to issue passport or travel document to make any endorsement whatsoever. However, Section 6 provides about the grounds for refusal. As per Section 6(2) the passport authority can refuse to issue a passport or travel document for visiting any foreign countries under Clause (c) of sub-section (2) of Section 5 on various grounds as specified therein and one of the ground is, when proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

9. In the present case, it is not in dispute that petitioner is facing trail in case FIR No.72 dated 14.07.2023 registered at Police Station Doraha, Police District Khanna, Ludhiana under Sections 364-A, 307 of the IPC.

10. Section 22 of the Passport Act confers power on Central Government, by way of a notification of the Official Gazette to exempt any person or class of persons from the operation of any of the provisions of the Act. By exercising its powers under said Section 22, the Central Government has issued notification dated 25th August, 1993 (Annexure P2), which reads as under:

**“MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION
New Delhi, the 25th August, 1993**

G.S.R. 570(E). - In exercise of the powers conferred by clause (a) of section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the

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Government of India in the Ministry of External Affairs no. G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts 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 Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

- (a) 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 the 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 permission to travel abroad for a period less than one year, but does not specify the period validity of the 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 canceled 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 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/401/37/79]
L.K. PONAPPA, Jt. Secy. (CPV)"]

11. The aforesaid notification would reveal that passport authority will issue to every citizen the passport for the period as specified in the order of the Court, in case the Court has specified the period for which the

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passport is to be issued. It is only in the case when no period, either for issue of the passport or for the travel abroad is specified in such order, the passport is to be issued by the passport authority for a period of one year.

12. In the present case, the learned Trial Court by way of impugned order declined the prayer of the petitioner for re-issuance /renewal of the passport for 10 years by observing that it was for the passport authority to see as to for how much period the same is to be issue. The said observation as made by the Trial Court is contrary to the notification dated 25th August, 1993 (Annexure P-2) as reproduced above, because it is for the Court concerned to specify the period for which the passport is to be re-issued/re-issued. It is only in the case when no period is mentioned that the passport authority will issue the passport for one year.

13. As such, the impugned order dated 31.10.2022 (Annexure P-1) is hereby set aside. The matter is referred back to the Trial Court concerned so as to pass fresh order by keeping in view the notification dated 25th August, 1993 (Annexure P-2).

Disposed of.

(DEEPAK GUPTA)
JUDGE

March 19, 2024
Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No