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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6534/2024**

AMIT KUMAR

..... Petitioner

Through: Ms. Seema Singh and Ms. Kalpana
Singh, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh and Mr. Akash Mishra,
Advocates for R-1 to 3.
Mr. Mohit Bhardwaj, Advocate for R-
4.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **08.05.2024**

CM APPL. 27275/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 6534/2024

1. The present writ petition has been filed by the Petitioner for a direction to the Respondents to issue a passport for a period of 10 years.
2. Material on record indicates that the Petitioner was an accused in FIR No.413/2004 dated 09.08.2004 registered at Police Station Sarai Rohilla for offences under Section 376 and 34 IPC.
3. The Petitioner has been convicted by the Trial Court for an offence under Section 376(2)(g) IPC and has been sentenced to undergo rigorous imprisonment for a period of 10 years with fine of Rs.5,000/-.



4. It is stated that an appeal being Crl. Appeal No. 1338/2010 has been filed by the Petitioner before this Court and the sentence has been suspended pending disposal of the appeal.

5. The Union of India has issued notification dated 25.08.1993 bearing No. GSR-570(E) which mandates that a no objection certificate has to be obtained during the pendency of the criminal proceedings from the concerned criminal court for renewal of passport which shall only be renewed for a period of one year or for a period as specified by the concerned court. The said notification reads as under:-

“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 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 travelled 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 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.”

6. Learned Counsel for the Respondent places reliance on a judgment passed by a Coordinate Bench in Crl.A. 607/2011. Paragraph 7 to 10 of the said order reads as under:-

“7. The grounds for refusal of passport are contained under Section 6(2) of the Passports Act, 1967, which is



reproduced as under:

"6. Refusal of passports, travel documents, etc. -

xxxx xxxx xxxx xxxx

(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 subsection (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) ****
- (b) ****
- (c) ****
- (d) ****

(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 committed by the applicant are pending before a criminal court in India;"

8. A perusal of aforementioned provision reveals that the passport authority can refuse to issue passport, inter alia, on the following two grounds:

(a) If the applicant has been found guilty of any morally reprehensible offence by an Indian court and sentenced to imprisonment for a period of at least two years, within the last five years prior to the date of application.



(b) If there are criminal proceedings pending against the applicant in an Indian court for any offence.

9. This Court, in case of Sabir v. State (NCT of Delhi) 2023 SCC OnLine Del 4116, had examined the law of Section 6(e)(f) of Passports Act and had observed as under:

“11. A perusal of this notification reveals its circumscribed ambit, which pertains exclusively to the exemption of individuals from the operation of Clause (f) of Section 6(2) of the Passports Act. The said notification lucidly elucidates its sole purpose of granting exemption to citizens who are the subject of pending criminal proceedings. As per the said notification, the Courts before whom the criminal proceedings are pending are empowered to grant permission to travel abroad, subject to certain conditions.

12. During the course of arguments, learned counsel for the appellant had argued that a period of 5 years post conviction, as mentioned under clause (e) of Section 6(2) of Passports Act had elapsed, and no permission of this Court was required for issuance of passport. Having thoughtfully examined the provisions of the Act and relevant notification, this Court is unable to agree with the contentions raised by the learned counsel for the appellant.

13. With regard to this argument, this Court notes that clause (e) and (f) of Section 6(2) of the Passport Act are exclusive of each other. It can be observed that clause (e) of Section 6(2) pertains to cases in which the applicant have completed 05



*years from the date of conviction, and, on the other hand, clause (f) of Section 6(2) pertains to cases which are pending before the court for trial. This essentially reveals that clause (e) deals with situations where no appeal from conviction is pending, as in cases where an appeal would be pending, the provision of clause (f) would come into play, since it is settled law that an appeal would amount to continuance of criminal proceedings. In this regard, a reference can be made to the decision of Hon^{ble} Apex Court in *Akhtari Bi v. State of M.P.* (2001) 4 SCC 355, wherein it has been held as under:*

"5. ...Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction..."

14. In the present case, the appellant's appeal against his conviction is pending before this Court since the year 2010. Consequently, it can be held that the case of the applicant is covered by clause (f) of Section 6(2) of the Passports Act, 1967, as the appeal of the applicant against the conviction recorded by learned Trial Court is pending before this Court. Thus, the appellant's situation falls within the purview of the aforesaid notification, conferring upon this Court, the requisite authority to exercise discretion and grant exemption."

10. Therefore, this Court has the power to grant exemption or no objection for the purpose of issuance/renewal of passport to the appellant herein, whose criminal appeal is pending before this Court."



7. In view of the above, this Court is not inclined to entertain the writ petition. However, liberty is granted to the Petitioner to approach the court of competent jurisdiction which is *in seisin* of the appeal to apply for a no objection for the purpose of renewal of the passport.

8. The writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 8, 2024

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