

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16278 of 2024

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Gautam Rana, Son of Chandra Bhusan Singh, resident of Village- Madhudih
P.S.- Pipra District- East Champaran.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of External Affair, Government of India.
2. The District Passport Officer, Regional Passport Office, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra- Advocate Mr. Priyesh Kumar- Advocate Mr. Nitish Kumar- Advocate
For Union of India	:	Mr. Additional Solicitor General Mr. Alok Kumar- C.G.C.
For the State	:	Mr. Divit Vinod- AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 5 10-04-2025
1. Heard learned counsel for the petitioner and the learned Central Government Counsel appearing on behalf of the Union of India and learned counsel for the State.
 2. The learned counsel appearing on behalf of the petitioner submits that petitioner was issued a passport bearing Passport No.L7755894 on 11.03.2014 and the same was valid upto 10.03.2024 as would manifest from Annexure-1 to the writ application.
 3. It is next submitted that during currency of the passport, no complaint whatsoever was made against the petitioner alleging any violation of the condition and misuse



of the passport. It is further submitted that petitioner was made an accused in a criminal case being Pipra P. S. Case No.40 of 2023 dated 28.01.2023 registered under Sections 341, 323, 342, 324, 307, 379, 504, 506 and 34 of the I.P.C. read with Section 27 of the Arms Act. The petitioner was granted the privilege of anticipatory bail by an order dated 13.09.2024 in Cr. Misc. No.47612 of 2024 (Annexure- P/2) passed by this Court on the ground that the case has been compromised (Annexure- P/2A).

4. The petitioner applied for renewal of his passport on 12.12.2023 on urgent basis and the passport was renewed on 15.12.2023 (Annexure- P/3). It is submitted that during course of verification, it transpired that petitioner has been made an accused in Pipra P. S. Case No.40 of 2023, accordingly, the respondent no.2 based on the said information, impounded the passport of the petitioner by an order dated 07.02.2024 (Annexure- P/4), which is impugned in the instant writ application.

5. It is next submitted that respondent no.2 impounded the passport of the petitioner in exercise of power conferred under Section 10((3)(e) of the Passport Act, 1967 with a direction to the petitioner to submit his passport



forthwith with the passport office.

6. The learned counsel submits that **Section 10(5) of the Passport Act, 1967** incorporates:- “(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document 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 a copy.”

7. It is submitted that from conjoint reading of Section 10(3)(e) and Section 10(5) of the Passport Act, 1967, it would manifest that it is mandatory for the Passport Officer to give reason for recording his satisfaction that a case for impounding the passport is made out under Section 10(3)(e) of the Passport Act, 1967 and only on the basis of pending criminal case against the petitioner, the petitioner’s passport



has been impounded under Section 10(3)(e) of the Passport Act, 1967.

8. It is submitted that the Passport Officer thus was required to record reasons for arriving at a conclusion that as to why impounding of the passport was necessary, in view of pending criminal case, but then, the order impugned does not even briefly record the reason for impounding the passport.

9. It is next submitted that investigation in Pipra P. S. Case No.40 of 2023 is still pending. It is further submitted that the police after investigation may submit charge-sheet connecting the petitioner with the offence finding the allegations to be true, or after investigation the police may come to a considered conclusion that petitioner is innocent and may file final form exonerating the petitioner from the allegations, but in both the situation, the police report will attain finality only when the learned trial Court applies its judicial mind on the point of cognizance. It is submitted that even if the police submits a charge-sheet finding the case to be true, the learned trial Court may accept the charge-sheet and take cognizance, or the learned trial Court after perusing the case diary may direct for further



investigation or may refuse to take cognizance, if the material collected during the course of investigation is not sufficient to establish a criminal charge against an accused. Similarly, if the police after investigation, submits final form exonerating the petitioner of the allegation, the learned trial Court may differ with the police report and take cognizance or may accept the report or may direct for further investigation. It is thus submitted that a criminal case instituted culminates only when cognizance is taken and till the time cognizance is not taken, the criminal case cannot be said to be pending before the Court of competent criminal jurisdiction.

10. The learned counsel next submits that impounding of passport entails civil consequences as it affects the right of a person whose passport stands impounded, as such, reason even briefly is required for impounding the passport. It is next submitted that the order impugned is also bad for the reason as the same was passed behind the back of the petitioner without giving him any opportunity to put-forth his case, more so, when the impugned action was adversely affecting the petitioner.

11. The learned counsel for the petitioner next submits that the Hon'ble Supreme Court in the case of



Vangala Kasturi Rangacharyulu vs. Central Bureau of Investigation 2020 Cri.L.J. (SC) 572, had held that the refusal of passport can be only in case where applicant is convicted during the period of five years immediately preceding the date of application for an offence involving moral turpitude and sentenced for imprisonment for not less than two years.

12. The learned counsel for the petitioner next submits that in **Vangala Kasturi Rangacharyulu's case** (Supra), the appellant was convicted for offence punishable under Sections 120B, 420, 468, 471 and 477A of the I.P.C. read with Section 13(2) and 13(1) of the Prevention of Corruption Act, 1988, the appeal filed by him was dismissed by the High Court. However, the sentence was reduced to a period of one year, thereafter the appellant had filed criminal appeal before the Hon'ble Supreme Court, which was pending consideration, while the criminal appeal of the appellant was pending consideration before the Hon'ble Supreme Court, the appellant filed an application for a direction upon the respondents to give no objection for renewal of his passport which expired on 12.11.2017 and it was informed to the Hon'ble Supreme Court that the authorities orally informed



the appellant that renewal of the passport was not being done due to pendency of the criminal appeal on which, the learned Additional Solicitor General submitted that renewal of passport can be only after the applicant obtains permission from the concerned trial Court and referred to Section 6.2 of the Passport Act, 1967, arguing that passport authority has power to refuse issuance of the passport in view of the pendency of criminal appeal filed by him in view of Section 6.2(e) and (f) of the Passport Act. The Hon'ble Supreme Court held that Section 6.2(f) relates to a situation where the applicant is facing trial in a criminal Court and held admittedly, at present, the conviction of the appellant stands still the disposal of criminal appeal. The sentence which he has to undergo is for a period of one year, the passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal. Thus, directed the authorities to renew the passport without raising objection relating to the pendency of the criminal appeal before the Hon'ble Supreme Court.

13. The learned counsel further submits that the Hon'ble Supreme Court based on the facts of the case held that renewal of passport cannot be refused merely because



appeal was pending, but in the instant case, the passport has been impounded merely for the reason that a criminal case has been instituted which is still pending investigation.

14. It is further submitted that the Hon'ble Supreme Court in the case of **Sumit Mehta vs. the State NCT of Delhi 2013 (15) SCC 570** at Para-13 observed:- "The law presumed an accused to be innocent till his guilt is proved, as a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty granted under Article 21 of the Constitution of India."

15. The learned counsel next submits that in the instant case, the passport authority during pendency of the investigation of the criminal case has impounded the passport of the petitioner, treating the petitioner guilty of committing a crime, when till date even cognizance has not been taken, as such, the authority by his action has presumed the petitioner guilty instead of presuming the petitioner to be innocent till his guilt is not proved.

16. It is next submitted that merely because a criminal case came to be instituted against the petitioner, as such, his passport was impounded by the authority without even realizing the consequences which it would entail. It is



submitted that petitioner in absence of passport stands crippled as he cannot go abroad. It is next submitted that the Hon'ble Supreme Court in the case of **Satish Chandra Verma vs. Union of India and others reported in 2019 SCC online SC 2048** at Para-5 observed:- "The right to travel abroad is an important basic human right for it narishes independent and self determining creative character of the individual, not only by extending his freedom of action, but also by extending the scope of his experience. The right also extends to private life, marriage, family and friendship which are the basic humanities which can be affected to refusal of freedom to go abroad and this freedom is a genuine human right."

17. The learned counsel thus submits that right to travel abroad cannot be deprived except by just fair and reasonable procedure, but then, in the instant case, the authority merely because a criminal case is pending investigation against the petitioner has deprived him of the said opportunity by impounding his passport.

18. The learned counsel for the petitioner next relying on a judgment of this Court in the case of **Mewa Lal Choudhary vs. The Union of India through the Secretary,**



Ministry of External Affairs and others reported in 2019

(4) P.L.J.R. 600, submits that the fact of the instant case is similar to the case of Mewa Lal Choudhary's case as the passport of Mewa Lal Choudhary was also impounded on the ground that a criminal case was pending against him. It is submitted that this Court after relying on the judgment of the Hon'ble Supreme Court came to a considered conclusion that passport of Mewa Lal Choudhary could not have been impounded merely because a criminal case was pending investigation against him and the learned counsel draws the attention of the Court to **Paras-12 and 13** of the judgment in the case of Mewa Lal Choudhary (Supra):-

"12. Having regard to the law [laid down by the Hon'ble Apex Court in a catena of judgments, as aforesaid, this Court is of the view that since neither the charge sheet has been filed by the police nor cognizance of the offence has been taken by the learned Magistrate in the aforesaid pending \[Sabour P.S.\]\(#\) Case No. 35 of 2017, it cannot be said that a criminal case is pending as against the petitioner herein so as to warrant impounding of the passport of the petitioner under \[Section 10\\(3\\)\\(e\\) of the \\[Passport Act, 1967\\]\\(#\\)\]\(#\), hence on this ground as well, the impugned](#)



order dated 24.10.2017 is liable to be quashed and is accordingly set aside.

13. Considering the facts and circumstances of the case and for the reasons mentioned herein above, the order dated 24.10.2017 passed by the Assistant Passport Officer, Regional Passport Office, Patna (Bihar) in terms of [Section 10\(3\) \(e\)](#) of the Passport Act, 1967 is quashed.”

19. The learned Central Government Counsel appearing on behalf of the Union of India submits that a counter-affidavit has been filed wherein the respondents have rebutted the pleadings made in the writ application. It is submitted that petitioner had applied in Tatkal Scheme under Re-Issue category on 15.12.2023 and the passport was issued to the petitioner on 15.12.2023 in post police verification mode. Further, the police authorities submitted their report that Pipra P. S. Case No.40 of 2023 is pending, accordingly, the authority after receiving the police report issued letter dated 21.12.2023 to the petitioner asking him to provide explanation regarding the circumstances in which he had suppressed the material information in his passport application and obtained the said passport, but the petitioner did not respond, thereafter impounding process was initiated



and in this regard, letter dated 27.12.2023 was issued to the petitioner to submit his explanation within 21 days regarding the circumstances under which he had suppressed the material information and why action should not be taken to impound the passport under Section 10(3)(e) of the Passport Act, 1967. Further, the Superintendent of Police, East Champaran in respect of Pipra P. S. Case No.40 of 2023, submitted a status report vide letter dated 23.01.2024 stating that petitioner is named accused in the criminal case and warrant has been issued. It is submitted that since petitioner did not avail the opportunity given to him to furnish his explanation, as such, his passport was impounded and the reason recorded in the order impugned for impounding the passport under Section 10(3)(e) of the Passport Act was:- Criminal case is pending before the Court.

20. The learned counsel appearing on behalf of the petitioner rebuts the said submission of the learned C.G.C. and submits that in the writ application, a specific pleading has been made that the order impugned in the instant case have been issued without issuing any notice and hearing the petitioner. It is further submitted that no doubt in the counter-affidavit, it has been averred that the respondent authorities



issued letter dated 21.12.2023 and letter dated 27.12.2023, but then, the said letters have not been brought on record, nor it has been pleaded in the counter-affidavit that the letters were served on the petitioner and thereafter, the petitioner chose not to reply the same. The learned counsel for the petitioner further submits that the reason assigned for impounding the passport is fallacious for the reason that the respondent authorities had impounded the passport on the ground that a criminal case is pending against the petitioner before a Court, but then, the criminal case instituted against the petitioner is still under investigation, as such, it cannot be construed by any stretch of imagination that the case is pending before a Court of competent criminal jurisdiction. It is next reiterated and submitted that it is only when cognizance is taken by the learned trial Court, in that event only, it can be construed that the matter has reached a Court of competent criminal jurisdiction and the same is pending adjudication in a Court of Law, but in the instant criminal case instituted against the petitioner, till date, no charge-sheet has been submitted as the case is still under investigation, as such, the date when the order impugned was issued on the said date, the reason for impounding the passport was not existing.



21. The learned C.G.C. next submits that though there was a specific direction of the authority in the order impugned directing the petitioner to submit his passport as the same was impounded, but then, the petitioner did not submit the passport in pursuance of the order of the authority competent. It is further submitted that even if the authority had passed an order which was subject to challenge, but then, petitioner could not have defied the said order by not submitting his passport before the authority competent, as such, the authority were of the view that petitioner could misuse the passport for avoiding appearance before the Court.

22. The learned counsel for the petitioner rebuts the said submission of the learned C.G.C. and submits that no doubt, the petitioner did not submit the passport with the Passport Officer in pursuance of the order impugned, but then, the reason assigned for impounding the passport that the petitioner might misuse the passport or may not appear in the Court again appears to be fallacious for the reason that the case till date has not reached the Court, as such, there was absolutely no occasion for the petitioner to avoid appearance before the Court. It is also submitted that once the passport was impounded by the authorities by the order impugned, the



same became a redundant document as the same could not have been used for any purpose, as such, whether it remained with the petitioner or the authorities was not of much consequence. The learned counsel for the petitioner next submits that the respondent authorities instead of assigning reason for impounding the passport in the counter-affidavit ought to have assigned the same in the order impugned itself as the reason is the link between the material on which certain conclusions are based. It is next submitted that an order passed by an authority has to be judged on the basis of reason stated in the order and its validity cannot be judged on basis of reason placed on record by way of affidavit. It is further submitted that giving reason minimizes chances of arbitrariness and induce clarity.

23. The learned C.G.C., at this stage, submits that the petitioner rushed to this Court without availing his alternative remedy of appeal under Section 11 of the Passport Act, on which the learned counsel for the petitioner submits that the case was filed in the Year 2024 and was taken up on 24.10.2024 and respondents were directed to file counter-affidavit by a learned Coordinate Bench. Further, on 03.01.2025, the respondents were given last chance by way of



four weeks to file counter-affidavit, thereafter counter-affidavit was filed, as such, the writ Court entertained the writ petition. It is also submitted that a constitutional power vested with High Court and the Supreme Court cannot be fettered by an alternative remedy available in the statute, if the writ Court comes to a conclusion that injustice has been done and the order have been passed in breach of the statutory provision affecting the right of a citizen, in that event, the writ Court will not relegate the petitioner to avail alternative remedy.

24. After hearing the learned counsel for the parties, the Court is in complete agreement with the submissions made by the learned counsel appearing on behalf of the petitioner that passport of the petitioner could not have been impounded on the ground that a criminal case was pending, since cognizance in the case till date as submitted has not been taken, nor the said pleading in the writ application has been denied by the authorities in their counter-affidavit. Further, the order impugned impounding the passport also does not assign any reason for impounding the same, but then, the authorities have tried to explain the same on affidavit by way of filing the instant counter-affidavit, which cannot be looked into.



25. Having regard to the facts and circumstances of the case and also taking into consideration the case laws relied by the learned counsel for the petitioner, the order impugned dated 07.02.2024 passed by the respondent no.2 impounding the passport of the petitioner is hereby quashed.

26. Since the passport stands renewed and is with the petitioner, as such, no further direction in that regard is required.

(Satyavrat Verma, J)

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