



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-30519-2024 (O&M)
Date of decision : 10.01.2025

AMAR NATH

...Petitioner

Versus

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sukhmeet Singh, Advocate
for the petitioner.

Mr. Hemant Hans, Central Government Counsel
for respondents No.1 to 3.

HARSH BUNGER, J. [ORAL]

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, *inter alia*, is for issuance of a writ in the nature of *mandamus* directing the respondents to issue passport to the petitioner.

2. Briefly, the petitioner applied for a fresh passport vide application dated 17.12.2022 (Annexure P-1), whereupon the following police verification report dated 01.03.2023 (Annexure P-2) was submitted :-

“...As per report No.4999-5P of SHO P.S. City Faridkot, his name, address, caste and parents name are correct. He is residing in given address since birth. As per inquiry PPR Register No.VI-Part-II Form 27.16(6), Register No.IX Part-II Form No.22.59(1)B, Part-III Form 22.59(1) D

and Part-V Form 22.59(1) E, against him (1) FIR No.34 dated 7.2.2019 U/s 341/323/427/379B IPC P.S. City Faridkot (Court of Sh. Sanjiv Kundi Judge Faridkot, cancellation report has been accepted on 10.4.2021). 2. FIR No.150 dated 09.07.2017 U/s 21/61/85 NDPS Act P.S. City Faridkot (under trial). 3. FIR No.149 dated 5.7.2018 U/s 22/61/85 of NDPS Act P.S. City Faridkot (under trial) and FIR No.11 dated 28.01.2021 U/s 21B/61/85 NDPS Act P.S. Nathana, Distt. Bathinda (under trial) are registered. Applicant has applied for new passport. Applicant has obtained permission from the Court of Ms. Monika Lamba, CJM Faridkot in case FIR No.150 dated 9.7.2017 u/s 21/61/85 NDPS Act P.S. City Faridkot in CNR No.PBFD030014072018, but never obtained any order from any Court in other cases. The last authority to issue or not issuing passport is with Passport Authority Amritsar.”

3. It is stated that out of four FIRs registered against the petitioner, cancellation report was submitted in case FIR No.34 dated 07.02.2019, which was accepted by the Court, whereas, the other three cases FIRs i.e. FIR No.150 dated 09.07.2017; FIR No.149 dated 05.07.2018, both registered at Police Station City Faridkot and case FIR No.11 dated 28.01.2021 registered at Police Station Nathana, District Bathinda, are pending trial.

3.1 It is further stated that in all the afore-said three pending case FIRs, the petitioner has been granted permission to get new passport issued. Copy of orders dated 21.09.2023 (in case FIR No.11), 02.12.2023 (in case FIR No.149) and 13.12.2022 (in case FIR No.150), are annexed as Annexures P-3, P-5 and P-6, respectively.

3.2 It is submitted that since the passport to the petitioner was not issued, he served a legal notice dated 24.02.2023 (Annexure P-7) upon the official respondents but to no avail.

3.3 In theafore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court, for the relief/s, as noticed here-in-above.

4. In the present case, an affidavit of Regional Passport Officer, Amritsar has been filed, wherein, the status of the afore-said cases FIRs has not been disputed; however, while relying upon Section 6(2)(f) of the Passport Act, 1967, it is stated that the passport authorities can refuse to issue a passport or travel document for visiting any foreign country if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India. A further reference has been made to a notification GSR-570(E) to state that an exemption is afforded to the 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 Section 6(2)(f) of the Passport Act. It is contended that in terms of the afore-said notification GSR-570(E), the petitioner has to seek permission from the concerned Court to depart from India and only in that eventuality, a passport can be issued to the petitioner, whereas, as per the orders (Annexures P-3, P-5 and P-6), the Courts have only granted permission for renewal of passport and no permission to depart from India or for going abroad, has been granted to the petitioner; therefore, the passport cannot be issued to him.

5. Heard.

6. The Hon'ble Apex Court in "*Maneka Gandhi v. Union of India*" reported in 1978 (1) SCC 248, held that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so and

such law contains fair, reasonable and just procedure. Hon'ble the Apex Court made following observations:

"Thus, no person can be deprived of his right to, go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports, Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law..."

6.1 In ***Satish Chandra Verma v. Union of India (UOI) and others, 2019 SCC Online (SC) 2048***; the Hon'ble Apex Court observed as under:

"The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms 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 through refusal of freedom to go abroad and this freedom is a genuine human right."

6.2 The Hon'ble Apex Court in ***Sumit Mehta v. State of NCT of***

Delhi, 2013 (15) SCC 570, observed as under:

"The law presumes 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 guaranteed under Article 21 of the Constitution of India."

6.3 The Hon'ble Supreme Court in **"Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation", 2020 CrL. L.J. (SC) 572**; had an occasion to examine the issue of pendency of criminal cases in the light of the provisions of the Passports Act, 1967. The petitioner therein was convicted in a case for the offences under Sections 420 IPC and also Section 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988, against which, an appeal was filed and the same was dismissed, however the sentence was reduced to a period of one (01) year. The petitioner therein approached the Apex Court by way of filing an appeal and the same was pending. In those circumstances, Hon'ble Apex court held that refusal of a passport can be only in case where an applicant is convicted during the period of five (05) years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment was not less than two years. It was observed that Section 6(2)(f) of 1967 Act relates to a situation where the applicant is facing trial in a criminal Court. Therefore, considering the said facts, the Apex Court held that Passport Authority cannot refuse renewal of the passport on the ground of pendency of the criminal appeal. Thus, the Hon'ble Apex Court directed the Passport Authority to issue the passport of the applicant without raising the objection relating to the pendency of the aforesaid criminal appeal in Supreme Court.

6.4 In **Ganni Bhaskara Rao v. Union of India, 2022 AIR (Andhra Pradesh)**; Hon'ble Andhra Pradesh High Court observed as

under:-

“5. This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot "hold" or possess a passport. As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years. The use of the conjunction 'and' makes it clear that both the ingredients must be present. Every conviction is not a ground to impound the passport. If this is the situation post-conviction, in the opinion of this Court, the pendency of a case / cases is not a ground to refuse, renewal or to demand the surrender of a passport...”

6.5 In **Narendra K. Ambwani v. Union of India, 2014(35) RCR (Civil) 769**; a Division Bench of Bombay High Court held as under:-

“10. In the circumstances, we propose to issue guidelines to be followed by the Respondents on receipt of the applications for renewal of the passports, in all cases, where the Magistrate's court has directed that the passports may be renewed as per the "Rules".

11. Accordingly, we issue the following directions :-

(a) In all cases where the Magistrate's court directs renewal of the passports under the Rules, the Passport Rules, 1980 shall apply and passports other than for a child aged more than 15 years shall be renewed for a period of ten years or twenty years as the case may be from the date of its issue. All qualifying applicants are entitled to have passport renewed for atleast ten years. The Regional Passport Office shall renew the passports of such qualifying applicants at least for ten years.

(b) In case where the passports are valid and the applicants hold valid visas on existing passport, the

Regional Passport Officer shall issue the additional booklet to the same passport provided the applicant had obtained permission to travel abroad.

(c) If the learned Magistrate passes an order making the reference to the said Notification No. G.S.R. 570(E) dated 26th August, 1993, the passport shall be renewed only for such period that the Magistrate may specify in the order or as otherwise specified in the said Notification where the passport of the applicant is valid for less than one year, the additional booklet may be issued subject to the orders to be obtained in this behalf only of the Magistrate concerned.

12. For avoidance of doubt, we clarify that the guidelines set out herein will be applicable only in the cases where the learned Magistrate ordered renewal of the passports as per Passport Rules, 1980 and to no other. In other cases, where the learned Magistrate had granted permission to the accused persons to depart from India, the provisions of Section 6 (2) (f) of the Passports Act, 1967 and the Notification(s) issued thereunder from time to time by the Ministry of External Affairs or such other competent authority so empowered, will continue to apply and directions permitting the accused persons to depart from India and/or the orders permitting renewal of the passports of such accused persons shall continue to be governed by such Notification(s)...

7. From the above referred judicial pronouncements, it is apparent that mere pendency of criminal case cannot be the ground to deny passport facilities to an applicant since right to personal liberty not only includes applicant's right to travel abroad, but also applicant's right to possess or hold a passport. Further, keeping in view the observations made by Hon'ble the Apex Court in ***Vangala Kasturi Rangacharyulu's case (supra)***, it is clear that if a person convicted of a crime is entitled to seek a renewal as held by the Hon'ble Supreme Court of India, this Court does not

find any reason to hold that the petitioner who is only an accused (although in three cases mentioned above) cannot hold a passport, especially when in all the said three cases, the trial Court has permitted his application for renewal of passport.

8. Taking into consideration the aforesaid facts and circumstances of the case, and having duly considered the law laid down by the Apex Court and other High Courts in the various Judgments (referred to and extracted above), the instant writ petition is disposed of with the following directions :-

- i) The petitioner herein shall submit an undertaking along with an affidavit before the trial Court(s) concerned in all the cases wherein petitioner is facing trial, stating that he will not leave India during pendency of the said case without permission of the Court and that he will co-operate with trial Court in concluding the proceedings in the said case.*
- ii) On filing such an undertaking(s) as well as affidavit(s), the trial Court shall issue a certified copy of the same within two (02) weeks therefrom;*
- iii) The petitioner herein shall submit certified copies of aforesaid undertaking(s) before the Respondent – Passport Officer for renewal of his passport;*
- iv) The Respondent-Passport Officer shall re-consider the application of the petitioner for issuance of passport in the light of the observations made by this Court herein as well as the contents of the undertaking(s) given by the petitioner for renewal of his passport in accordance with law, within three (03) weeks from the date when the petitioner submits certified copies of undertaking(s) in terms of direction nos.(ii) and (iii) above;*
- v) On renewal of the Passport of the petitioner, the concerned Regional Passport office shall retain such renewed passport and the concerned Regional Passport office shall send an intimation in that regard to the petitioner;*

vi) However, liberty is granted to the petitioner herein to file an application before the concerned trial Court(s) in each individual case wherein petitioner is facing trial, for seeking permission to travel aboard and it is for the concerned trial Court(s) to consider the same in accordance with law.

(vii) In case, the petitioner produces permission to travel abroad in all the aforesaid cases from concerned trial Court(s), before the concerned Regional Passport Office, then the passport of the petitioner be released to him against due acknowledgement forthwith (not exceeding three days);

(viii) It is made clear that in case, the petitioner is found involved in any other case, as well, the same process as indicated above, be followed.

9. All pending applications (if any) shall also stand closed.

January 10, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No