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

+ W.P.(C) 1080/2025, CM APPL. 5334/2025, CM APPL. 5335/2025
MR SANJAY DHAKANPetitioner

Through: Mr. Shishir Prakash, Mr. Vijay M. Chauhan and Ms. Karuna K. Thareja, Advocates.

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Arjun Mahajan, SPC for UOI alongwith Mr. Apoorv Upmanyu, Mr. Harsh Vashisht, Mr. Vidur Dwivedi, GP for UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **29.01.2025**

1. The present petition under Article 226 of the Constitution of India assails a Seizure Memo dated 01.12.2023 issued by the Office of the AFRRO Immigration NSCBI Airport Kolkata, whereby the passport of the petitioner (bearing no. S1273829) has been seized on the ground of travelling to Yemen in contravention of the notification dated 26.09.2017 issued under Section 19 of the Passport Act, 1967. The said notification provides as under:-

“Now, therefore, in exercise of the powers conferred by clause (d) of section 19 of the Passport Act, 1967 (15 of 1967), the Central Government, being of the opinion that it is necessary and expedient in the public interest so to do, hereby issues the following directions, namely:-

(i) the passport or travel document issued by the Central Government is invalid for the travel of holder to Yemen as the travel of the holder to Yemen would seriously impair the conduct of foreign affairs of the Government of India;



(ii) any Indian national who travels to Yemen in violation of this notification, shall be liable for action under section 12 of the said Passports Act, 1967 and the passport shall be liable for impounding or revocation, as the case may be, under sub-section (3) of section 10 of the said Act;

(iii) violation of the directions issued by this notification by any holder shall be liable for refusal of passport under section 6 of the said Act for a period of seven years from the date of revocation of such passport;

(iv) any Recruiting Agent or a Company sending Indian nationals to Yemen shall be individually or collectively held responsible, and all such Agents or Company, including all its Directors, shall personally be liable to be prosecuted under the relevant provisions of the Indian Penal Code, if the Indian nationals so sent are killed or kidnapped or come to any harm, while travelling to Yemen;

(v) in addition to above, criminal proceedings also may be initiated against owners of the foreign ships carrying Indian national to Yemen and visas shall be denied to them for any future travel to India.”

2. It is undisputed that the petitioner travelled to Yemen in contravention of the aforesaid directions, however, learned counsel for the petitioner submits that there are ameliorating circumstances to which attention has been drawn in the representation dated 11.12.2024 submitted to the Chief Passport Officer, Ministry of External Affairs, Consular, Passport and Visa Division.

3. It is emphasised that the petitioner was constrained to travel to Yemen in connection with his employment in a company known as the Wardaht Dubai Gold Company Ltd. inasmuch as his employer deputed him as a Manager in Yemen. It is pointed out that since the petitioner is the sole bread earner of his family, he had no option but to comply with the directions of his employer to discharge the responsibilities assigned to him in Yemen. He further points out that the notification dated 26.09.2017 itself contains a provision for relaxation in the following terms:-



“3. The aforesaid directions may also be relaxed by the Central Government for specific and essential reasons of travel, for which permission for a limited time period may be granted by the Central Government at the express request of the applicant who would, nevertheless, travel at his or her own personal risk without any liability to the Government of India or any State Government concerned and any such request for exemption may be sent to jsgulf@mea.gov.in.”

4. I find no reason to construe the power of relaxation narrowly, so as to preclude the exercise thereof by the concerned authorities even in a deserving case, merely on the ground of the request being belated. In the opinion of this Court, in the facts and circumstances of the present case, it would be apposite for the respondent to consider the petitioner's representation seeking requisite exemption, as sought in his representation dated 11.12.2024.

5. This Court in ***Jayan Raveendran vs Union of India***, WP(C) 12078/2022; the Kerala High Court in ***Shirin Shahana v. Union of India*** 2022 SCC OnLine Ker 10123; and the Karnataka High Court in ***Shany Jose v. Union of India***, WP(C) 8969/2024 while dealing with a similar situation has held that in a *bonafide* case, even a belated request can be considered by the concerned authorities. In ***Jayan Raveendran vs Union of India*** (*supra*), this Court held as under:

“8. The undisputed facts of the case reveal that on account of violation of the notification dated 26.09.2017 the passports of the Petitioners have been seized in exercise of the powers conferred under Section 14 of the Passports Act, 1967. Learned Counsel for the Petitioner, at this stage, was fair enough in stating before this Court that the Petitioners be granted an opportunity individually to submit a detailed representation to the Passport Officer/ competent authority and in case such a representation is preferred by the Petitioners, the Passport Officer/ competent authority shall decide the representation in accordance with law, within reasonable time.

9. The prayer made by the Petitioners is a genuine prayer and, therefore, any representation preferred in the matter shall be decided in



accordance with law by the Passport Officer/ competent authority within a period of 8 weeks thereafter.”

6. In ***Shirin Shahana v. Union of India*** (supra), the Kerala High Court opined that since the travel undertaken by the petitioner was inevitable and without any *mens rea*, the authorities should consider the case of petitioner as an exception and decide the case in accordance with law while taking into account the hardship undertaken and bonafide intentions of the petitioner. The relevant portion of the said order reads as under:

9. On perusal of the notification extracted above, it is evident that any Indian national who travels to Yemen in violation of the notification is liable for inaction under Section 12 of the Passport Act, 1967 with an exception that the aforementioned notification would not be applicable to the officials of the Government of India posted in the Indian Embassy in Sana by the Ministry of External Affairs and for the officials of the Government of India or any State Government travelling to Yemen for attending their official duties. It is further clarified that the aforementioned direction can be relaxed by the Central Government for specific and essential reasons of travel, for which permission for a limited time period can be granted by the Central Government at the express request of the applicant who would, nevertheless, travel at his/her own personal risk without any liability to the Government of India or any State Government concerned. Once the applicability of the aforementioned notification, as per the later instructions dated 18.8.2022 are in intact and Government is empowered to grant exemption and relaxation to the employees to travel would equally have the jurisdiction to entertain the request of the individual person whose passport for reaching India after having travelled to Yemen during the validity of the notification of 2017 to consider the request individually and pass an appropriate order and in case it is found that the travel was inevitable without any mens rea, there would not be any bar for the Central Government to carve out exception. In this view of the matter, in case the petitioners in both the writ petitions make individual representations to the Secretary (Gulf), Ministry of External Affairs within a period of one month from the date of receipt of a certified copy of the judgment explaining the hardship and attenuating circumstances of travel, the respondent will decide the same in view of the observations recorded above and in accordance with law within another period of 30 days thereafter.



7. Similarly, the Karnataka High Court in ***Shany Jose vs Union of India*** (supra) has held as under:

“.....15. It would not be inapposite to mention that a starred question was raised in the Rajya Sabha. While answering the question, the Minister for External Affairs with regard to the seizure of passport has replied as follows:

“(a) to (d): In view of the fragile political and security situation in Yemen, Government of India promulgated a travel ban to Yemen through Gazette Notification S.O.3223 (E) dated 26 September 2017 (Annex-I). The Notification continues to remain in force. Under the provisions of this Notification so far, 422 passports have been seized by Indian authorities for travelling to Yemen despite the travel ban. No passports have been seized for travel to any other country.

In order to mitigate the sufferings of the people who had travelled to Yemen due to job compulsions or due to ignorance, Government has issued guidelines to all Passport Issuing Authorities to process the release of passports on case-to-case basis. A final decision for release of passports is taken by the Ministry of External Affairs and conveyed to Passport Issuing Authorities. So far, 169 passports have been released.

Any Indian citizen whose passport has been seized for travel to Yemen despite the travel ban can approach the respective Passport Issuing Authority for release of the passport. Government continues to take a compassionate view on individuals who have travelled to Yemen despite the travel ban”
(Emphasis supplied)

The reply is, any Indian citizen whose passport has been seized for travel to Yemen despite the travel ban can approach the respective authorities for release of the passport. The Government would take a compassionate view is what is replied to. It also indicates that 169 passports of the kind have already been released.

*16. In the light of the aforesaid circumstances what becomes unmistakably clear is, that this Court would not enter into doing any violence to the Notification, as the Notification is issued in furtherance of security of the nation. If any Notification or law is brought into force for the purpose of security of nation, Courts exercising jurisdiction under Article 226 of the Constitution of India would be **loathe** to even consider such cases, as the*



security of the nation is paramount, though the Notification is not under challenge in the case at hand. Nevertheless, it is the interpretation of the Notification that is projected by the petitioner. In the light of the aforesaid answer by the Minister of External Affairs, I deem it appropriate to permit the petitioner to submit a detailed representation to the Regional Passport Officer, in whose custody the passport of the petitioner is, to consider the case of the petitioner strictly in consonance with what is observed in the course of the order, as also the orders passed by the High Court of Kerala and the High Court of Delhi. Therefore, the writ petition deserves to succeed, albeit in part, only for a direction for consideration of the representation of the petitioner, for redressal of the grievance.”

8. In the circumstances, the present petition is disposed of with a direction to the respondent/Chief Passport Officer to treat the present petition itself as a representation of the petitioner seeking relaxation from the rigours of the aforesaid notification dated 26.09.2017, and to pass further consequential direction/s. If so warranted, suitable undertaking/s may be sought from the petitioner as a pre-condition for grant of requisite relaxation.

9. Let the aforesaid exercise be done within a period of 8 weeks from today.

10. The present petition, along with pending applications, is disposed of in the above terms.

SACHIN DATTA, J

JANUARY 29, 2025/at