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(2024) 03 TEL CK 0029

**High Court For The State Of Telangana:: At Hyderabad**

**Case No:** Writ Petition No. 7505 Of 2024

Minhajuddin Qazi Mohammed

APPELLANT

Vs

Union Of India

RESPONDENT

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**Date of Decision:** March 26, 2024

**Acts Referred:**

- Constitution Of India, 1950 - Article 21
- Indian Penal Code, 1860 - Section 420
- Passports Act, 1967 - Section 6(2), 6(2)(e), 6(2)(f), 10(d)
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

**Hon'ble Judges:** Surepalli Nanda, J

**Bench:** Single Bench

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**Judgement**

1. Heard Mr.B.Sudhakar Reddy, learned counsel appearing on behalf of the petitioner and learned Counsel representing Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing on behalf of respondent Nos.1 and 2.

2. The petitioner approached the Court seeking the prayer as follows:

“to issue a Writ, Order, or Direction, more particularly one in nature of Writ of MANDAMUS declaring the action of the Respondent No.2 in not renewing the petitioner's Passport vide File No.HY1076322422724 dated 04-03-2024 as illegal arbitrary and without jurisdiction and consequently direct the Respondent No.2 to renew the passport of the petitioner vide File No.HY1076322422724 dated 04-03-2024 for a period of 10 years, in the Interest of Justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the Case.”

3. The case of the petitioner in brief, as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition is as follows:

It is the specific case of the petitioner that the petitioner was issued passport on 29.03.2006 vide passport bearing No.F9717093 which was valid upto 28.08.2016 and in pursuance to application made by the petitioner before expiry of the passport in the year 2016 the 2nd respondent herein had renewed the petitioner's passport and issued passport vide No.P3035978 on 09.06.2016 which was valid upto 08.06.2026.

It is further the case of the petitioner that the petitioner lost petitioner's passport and the petitioner also made a police complaint on 14.02.2024 informing about the loss of petitioner's passport to the police and the Inspector of Police, P.S. Chilkalguda, Hyderabad issued NOC Certificate vide Lr.No.MISC/OW/CKD/2024, dated 02.03.2024 for obtaining the duplicate passport from the concerned authority.

It is the specific case of the petitioner that, he is an Islamic Preacher and he will perform Umrah(prayers) in number of masjids in the city. The petitioner had to go Macca for performing Umrah during the Ramzan season for a period of fourteen days and the petitioner therefore, requested the 2nd respondent to issue passport vide application HY1076322422724, dated 04.03.2024 along with the NOC certificate issued by the Police department as the petitioner has to travel to Macca during the Ramzan season. In response to the application of the petitioner seeking re-issuance of the passport the petitioner received Notice vide Letter Ref.No.SCN/317369187/24, dated 14.03.2024 issued by the 2nd respondent seeking clarification from the petitioner pertaining to petitioner's involvement in criminal cases vide 1)Cr.NO.1003/2022 U/s.448, 290, 506 r/w 34 IPC, vide C.C. No.1120 of 2023, 2) 53/2023 u/s 323,324,506 r/w 34 of IPC vide C.C.No.1092 of 2023 of Police Station Chilkalguda, and 3)Cr.356 of 2020 u/s. 493, 420 417, 506 IPC of Police Station Saidabad, vide C.C.No.593 of 2021.

It is further the case of the petitioner that petitioner submitted his detailed explanation by email dated 15.03.2024 to the letter dated 14.03.2024 issued by the respondent No.2 seeking clarifications from the petitioner pertaining to petitioner's involvement in few criminal cases and also addressed a detailed letter dated 15.03.2024 to the 2nd respondent. But however, no orders have been passed by the respondent No.2 on petitioner's application dated 04.03.2024 seeking passport facilities duly considering the detailed explanation submitted by the petitioner on 15.03.2024. Aggrieved by the same the petitioner approached the Court by way of filing the present Writ petition.

4. Learned counsel appearing on behalf of the petitioner submits that the respondents are not renewing petitioner's passport on the ground of pendency of criminal cases 1)Cr.NO.1003/2022 U/s.448, 290, 506 r/w 34 IPC, vide C.C. No.1120 of 2023, 2) 53/2023 u/s 323,324,506 r/w 34 of IPC vide C.C.No.1092 of 2023 of Police Station Chilkalguda, and 3)Cr.356 of 2020 u/s. 493, 420 417, 506 IPC of Police Station Saidabad, vide C.C.No.593 of 2021.

5. The learned counsel for the petitioner further contends that, respondents cannot refuse the renewal of passport and deny passport facilities to the petitioner on the ground of the pendency of the aforesaid criminal case/cases against the petitioner and the said action of the respondents is contrary to the procedure laid down under the Passports Act, 1967, and seeking renewal of petitioner's passport vide File No.HY1076322422724 for a period of ten years, the petitioner approached the Court by filing the present writ petition.

**PERUSED THE RECORD.**

6. This Court under similar circumstances had been passing orders directing the respondent-Regional Passport Authority to consider the application of the petitioner seeking issuance/renewal/release of passport. This court further opines that, pendency of criminal case/cases against the petitioner cannot be a ground to deny issuance of a passport or deny renewal of passport or impound or detain a passport since the right to personal liberty of an individual would include not only the right to travel abroad but also the right to possess a Passport.

7. This Court is of the firm opinion that the Respondent cannot refuse the issuance/renewal of passport of the petitioner on the ground of the pendency of the aforesaid criminal cases' registered against the petitioner and the said action of the respondent is contrary to the procedure laid down under the Passports Act, 1967 and also the principle laid down by the Hon'ble Supreme Court reported in 2020 CrI.L.J.(SC) 572 in Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation.

8. It is relevant to note that the Apex Court in Vangala Kasturi Rangacharyulu (supra) had an occasion to examine the provisions of the Passports Act, 1967, and pendency of criminal cases and 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 for not less than two years. Section 6.2(f) relates to a situation where the applicant is facing trial in a criminal Court. 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. The sentence was reduced to a period of one (1) year. The petitioner therein had approached the Apex Court by way of filing an appeal and the same is pending.

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 Apex Court directed the Passport Authority to renew the passport of the applicant without raising the objection relating to the pendency of the aforesaid criminal appeal in S.C.

9. The Apex Court in another judgment reported in 2013 (15) SCC page 570 in Sumit Mehta v State of NCT of Delhi at para 13 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."

10. The Apex Court in *Menaka Gandhi vs 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. Para 5 of the said judgment is relevant and the same is extracted below:

"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.

Therefore, such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

11. The Division Bench of the Apex Court in its judgment dated 09.04.2019 reported in 2019 SCC online SC 2048 in *Satish Chandra Verma v Union of India (UOI)* and others it is observed at para 5 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."

12. Referring to the said principle and also the principles laid down by the Apex Court in several other judgments, considering the guidelines issued by the Union of India from time to time, the Division Bench of High Court of Punjab and Haryana at Chandigarh in *Noor Paul Vs. Union of India* reported in 2022 SCC online P & H 1176 held that a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

13. In the judgment dated 08.04.2022 of the Andhra Pradesh High Court reported in 2023 (4) ALT 406 (AP) in Ganni Bhaskara Rao Vs. Union of India and another at paras 4, 5 and 6, it is observed as under:

"This Court after hearing both the learned counsel notices that Hon'ble Supreme Court of India, in Criminal Appeal No. 1342 of 2017, was dealing with a person, who was convicted by the Court and his appeal is pending for decision in the Supreme Court. The conviction was however stayed. In those circumstances also it was held that the passport authority cannot refuse the "renewal" of the passport.

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.

The second issue here in this case is about the applicability of Section 6(2)(e) of the Passport Act. In the opinion of this Court that section applies to issuance of a fresh passport and not for renewal of a passport. It is also clear from GSR 570(E) which is the Notification relied upon by the learned counsel for the respondents and is referred to in the counter affidavit. This Notification clarifies the procedure to be followed under Section 6 (2) of the Passport Act against a person whom the criminal cases are pending. This notification permits them to approach the Court and the Court can decide the period for which the passport is to be issued. This is clear from a reading of the Notification issued. Clause (a) (i) states if no period is prescribed by the Court the passport should be issued for one year. Clause (a)(ii) states if the order of the Court gives permission to travel abroad for less than a year but has not prescribed the validity period of the passport, then the passport should be for one year. Lastly, Clause (a) (iii) states if the order of the Court permits foreign travel for more than one year but does not specify the validity of the passport, the passport should be issued for the period of travel mentioned in the order. Such a passport can also be renewed on Court orders. Therefore, a reading of GSR 570(E) makes it very clear that to give exception or to exempt applicants from the rigour of Section 6 (2)(f) of the Act, GSR 570(E) has been brought into operation. The issuance of the passport and the period of its validity; the period of travel etc., are thus under the aegis of and control of the Court.

14. The Division Bench of Bombay High Court in the Judgment dated 13.03.2014, reported in 2014 SCC OnLine Bom 356 in "Narendra K. Ambwani v. Union of India",

observed at Paragraph Nos.6 and 7, as under:

"6. This court held that the Rules have been framed under the Passport Act and under Rule 12, a passport other than for a child aged more than 15 years, shall be in force for a period of 10 years or 20 years as the case may be from the date of its issue.

7. In the present case, the Respondents contended that the order of the learned Magistrate did not specify the period for which the passport is issued and in the light of Notification dated 23rd August, 1993 (Annexure "6" to the petition), the passport of the citizen against whom the proceedings are pending in the criminal court in India, shall be issued for a period specified by the court and if no period is specified, the passport shall be renewed for a period of one year. This court held that interpretation of the order of the learned Magistrate dated 20th September, 2006 is contrary to the express language of the order. When the order speaks about renewal of the passport in terms of the Passport Rules, reference must be made to Rule 12 alone and the Passport Officer was bound to issue the passport either for a period of 10 years or for a period of 20 years as the case may be in his discretion. The Passport Officer could not have at any rate renewed the passport for a period less than 10 years. Accordingly, the Rule was made absolute and the Regional Passport Officer was directed to issue the passport, renewed for a period of 10 years or 20 years."

15. Another Judgment dated 30.11.2016 of the Division Bench of Bombay High Court reported in 2016 SCC OnLine Bom 14539 : (2020) 3 AIR Bom R 459 in Mr. Samip Nitin Ranjani v. Union of India and others, observed at relevant paragraphs 3 and 4, as under:

"3. The grievance of the Petitioner is that the Passport Authorities, instead of renewing the passport for a period of 10 years as provided under the provisions of the Passports Act, 1967, has renewed the passport only for a period of one year. Challenging the same, writ was filed.

4. In our view, the ratio of the judgment of this Court in the case of Narendra Ambwani (supra) would squarely apply to the facts of the present case. The Division Bench of this Court has issued guidelines which are to be followed by the Respondents on the receipt of application for renewal of passport. It is observed in paragraphs 10 and 11 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 passport 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 at least 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."

16. In view of the above, this Court opines that mere pendency of criminal cases is not a ground to refuse re-issuance/renewal of passport which was earlier issued to the petitioner for a period ten years from 09.06.2016 to 08.06.2026 which was however lost by the petitioner. Further, the petitioner is ready to co-operate with the trial Court in concluding trial. Therefore, the petitioner herein sought release of passport by issuing necessary directions to respondents for consideration of the present application filed by the petitioner dated 04.03.2024 seeking reissuance of petitioner's passport No.P3035978 for a period of ten (10) years without reference to criminal cases registered and pending against the petitioner.

17. In the light of the discussion as arrived at as above and duly considering the view and observations of the Apex Court and other High Courts in the Judgments referred to and extracted above, this Court opines that mere pendency of criminal cases registered against the petitioner cannot be a ground to decline reissuance/renewal of passport of the petitioner which was earlier issued for a period of ten years i.e., from 09.06.2016 to 08.06.2026 and further, duly considering the submission of the learned counsel for the petitioner that the petitioner is ready to co-operate with the trial Court in concluding the trial, hence on the ground of pendency of the criminal case or cases reissuance/renewal of passport cannot be denied to the petitioner by Respondent No.2 herein.

18. Taking into consideration the above facts and circumstances of the case, submissions of both the learned counsel for the petitioner as well as learned counsel for the respondents and also the view taken by the High Courts and Supreme Court in all the Judgments referred to and extracted above, the Writ petition is disposed of and the 2nd respondent herein is directed to consider the explanation of the petitioner submitted on 15.03.2024, in accordance to law duly

taking into consideration the law laid down by the Apex Court and other High Courts in the various judgments referred to and extracted above, and pass appropriate orders on petitioner's application dated 04.03.2024 seeking re-issuance of passport bearing No.P3035978 for a period of ten (10) years which had been earlier renewed by the respondent on 09.06.2016 and had been valid upto 08.06.2026 but however, the same had been lost, for which the petitioner had applied for reissuance of passport, in accordance to passport Act, 1967 within a period of one (01) week from the date of receipt of the copy of this order, without reference to the pendency of the Criminal Cases filed against the petitioner herein subject to the following conditions:

- i) The petitioner herein shall submit an undertaking along with an affidavit in criminal cases vide 1)Cr.NO.1003/2022 U/s.448, 290, 506 r/w 34 IPC, vide C.C. No.1120 of 2023, 2) 53/2023 u/s 323,324,506 r/w 34 of IPC vide C.C.No.1092 of 2023 of Police Station Chilkalguda, and 3)Cr.356 of 2020 u/s. 493, 420 417, 506 IPC of Police Station Saidabad, vide C.C.No.593 of 2021, stating that petitioner will cooperate with the trial Court in concluding the proceedings in the said C.C.;
- ii) The petitioner shall deposit the said passport within one week on petitioner's return to India on 25.04.2024 i.e., within one week from 25.04.2024;
- iii) The petitioner herein shall submit certified copy of undertaking that petitioner will not leave India during the pendency of the Criminal cases without permission of the Court, along with Passport before concerned Court within a period of one week on return to India on 25.04.2024, i.e., within one week from 25.04.2024;
- iv) The Respondent-Passport Officer shall consider the said application in the light of the observations made by this Court herein as well as the contents of the undertaking given by the petitioner's for renewal of passport in accordance with law;

However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.