



2025:KER:26159

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA, 1947

WP(C) NO. 2723 OF 2025

PETITIONER:

MUHAMMED RAFSAL,
AGED 31 YEARS,
S/O. EBRAHIM KOKKARANIKKAL HASSAN, KOKKARANIKKAL
HOUSE, WEST VENGOLA P.O., PERUMBAVOOR, ERNAKULAM
DISTRICT, PIN - 683556.

BY ADVS.
S.SANAL KUMAR (SR.)
T.J.SEEMA
BHAVANA VELAYUDHAN
DEVAVRATHAN S.
ANU BALAKRISHNAN NAMBIAR

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY, MINISTRY OF EXTERNAL
AFFAIRS, JAWAHAR LAL NEHRU BHAVAN,
OPPOSITE NATIONAL MUSEUM, RAJPATH,
NEW DELHI, PIN - 110001.
- 2 THE JOINT SECRETARY (PSP) & CHIEF PASSPORT OFFICER,
MINISTRY OF EXTERNAL AFFAIRS, PSP DIVISION, PATIALA
HOUSE, ANNEXE, TILAK MARG, NEW DELHI, PIN - 110001.
- 3 THE PASSPORT OFFICER,
REGIONAL PASSPORT OFFICE, PANAMPILLY NAGAR, KOCHI,
ERNAKULAM, PIN - 682036.

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- 4 THE CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY THE DIRECTOR, 5-B, CGO COMPLEX,
LODHI ROAD, NEW DELHI, PIN - 110003.
- 5 ASSISTANT DIRECTOR (NCB),
CENTRAL BUREAU OF INVESTIGATION CGO COMPLEX,
LODHI ROAD, NEW DELHI, PIN - 110003.
- 6 THE STATE POLICE CHIEF KERALA
STATE POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN - 695010.
- 7 INSPECTOR GENERAL OF POLICE (CRIMES), SOUTH ZONE
CBCID HQ, INTERPOL LIAISON OFFICER, STATE POLICE HEAD
QUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM,
PIN - 695010.

BY ADV SREELAL WARRIAR
SRI. T.C.KRISHNA, SCGC,
SRI. SREEJITH V.S., GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



‘C.R’

JUDGMENT

This writ petition challenges Ext.P10 order of the third respondent and Ext.P15 order of the second respondent in an appeal filed against the Ext.P10 order.

The brief facts of the case are as follows:

2. The petitioner is the accused in C.C No.688/2020 of Judicial First Class Magistrate Court, Chalakudy arising from Crime No.502 of 2018 of Mala Police Station as also in C.C. No.246/2022 of Judicial First Class Magistrate Court-III, North Paravur arising from Crime No.736/2019 of Varappuzha Police Station. Crime No.502 of 2018 has been registered alleging commission of the offence under Section 420 r/w Section 34 of the IPC while Crime No.736 of 2019 has been registered under Sections 406 and 420 r/w Section 34 of the Indian Penal Code. The petitioner applied for the re-issue of his passport relying on the permissions granted by the Judicial First Class Magistrate Court, Chalakudy and the Judicial First Class Magistrate Court-III, North Paravur, permitting the issue of a passport to the petitioner. While the Judicial First Class Magistrate Court, Chalakudy permitted the renewal/re-issue of the passport for



a period of three years, the Judicial First Class Magistrate-III, North Paravur permitted the renewal/reissue of the passport for a period of five years. It appears that there is a red corner notice issued by Interpol on account of certain proceedings initiated against the petitioner by the Law Enforcement agencies in Qatar. The Original Authority as well as the Appellate Authority found that since the petitioner had not produced any permission to travel abroad from the Judicial First Class Magistrate Court, Chalakudy and the Judicial First Class Magistrate Court-III, North Paravur and on account of the red corner notice issued against the petitioner, he is not entitled to a re-issue of the passport.

3. Sri. S. Sanal Kumar, the learned Senior Counsel appearing for the petitioner on the instructions of Adv. Anu Balakrishnan Nambiar submits that the permissions granted to the petitioner by the Judicial First Class Magistrate Court, Chalakudy and the Judicial First Class Magistrate Court-III, North Paravur clearly indicate that the petitioner is entitled to the re-issue of his passport. It is submitted that those orders only require that before travelling abroad, the petitioner is to obtain further permission from those Courts. It is submitted that the petitioner will travel abroad



only after obtaining permission from those Courts and therefore, the finding that the orders permitting the re-issue of passport are not sufficient for considering the application for such re-issue may not be sustainable.

4. The learned Senior Counsel placed reliance on the judgment of the Supreme Court in ***Bhavesh Jayanti Lakhani v. State of Maharashtra and Others; (2009) 9 SCC 551*** to contend that the mere issuance of a red corner notice is not sufficient for the arrest of a person in India. It is submitted that a perusal of Ext.P17 will indicate that the petitioner was convicted for a period of one year by the authorities in Qatar and while a red corner notice has been issued, no steps for extraditing the petitioner from India have been taken by the authorities. It is submitted that a reading of the judgment of the Supreme Court in ***Bhavesh Jayanti Lakhani (supra)*** will indicate that unless proceedings under the ***Extradition Act, 1962*** have been initiated, a person cannot be extradited from India. It is submitted that Ext.P17 will indicate that the petitioner was convicted in Qatar on 18.10.2020 and for the past more than 4 years, no steps have been taken by the Qatar authorities to obtain extradition of the petitioner from India. It is submitted that in such circumstances, the



non-consideration of the application filed by the petitioner for the re-issue of his passport is violative of the fundamental rights of the petitioner guaranteed under Article 21 of the Constitution of India.

5. The learned Central Government Counsel vehemently opposes the grant of any relief to the petitioner. It is submitted that the petitioner is accused in at least two criminal cases in India and there is a red corner notice issued by the Interpol against the petitioner. It is submitted that in terms of the provisions contained in Sections 6(2)(d) and 6(2)(e) of the Passports Act, 1967 (in short 'the 1967 Act') and the provisions of G.S.R 570(E) dated 25.08.1993 issued by the Government of India in the exercise of the power conferred by Section 22 of the 1967 Act indicate that the petitioner is not entitled to the re-issue of the passport. It is submitted that the provisions of G.S.R 570(E) clearly indicate that the petitioner must obtain permission from the Criminal Court where the criminal case against him is pending to travel abroad and a perusal of Exts.P1 and P2 orders will indicate that the petitioner has not been granted such permission to travel abroad though there is a permission granted to apply for and obtain a passport with short validity. It is submitted that the provisions of Section 6(2)(d) of the 1967 Act indicate that



when a red corner notice is issued to the petitioner and when the petitioner has been evading legal process in a country having friendly relationships with India, the petitioner cannot be issued with a passport.

6. Having heard the learned Senior Counsel appearing for the petitioner and the learned Central Government Counsel, I am of the view that the petitioner is entitled to a direction to the competent among the respondents to consider the application of the petitioner for re-issue of passport. The orders obtained by the petitioner from the Judicial First Class Magistrate Court, Chalakudy and the Judicial First Class Magistrate Court – III, North Paravur indicate that both the Courts have granted permission for the issue of a passport to the petitioner though both Courts have clearly made it a condition that the petitioner shall obtain permission of the Court before traveling abroad. Section 6(2)(f) of the 1967 Act reads thus:-

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

(1)....

(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).....(e).....

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

....."

However, the Government of India has, in the exercise of power under Section 22 of the 1967 Act issued G.S.R 570(E) dated 25.08.1993 which to the extent relevant reads thus:-

"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 exempt 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;.....”

Therefore, as far as the Passport Authority is concerned, the fact that Exts.P1 and P2 orders do not specifically grant permission to the petitioner to travel abroad need not be a reason to deny the re-issue of the passport, especially when the petitioner has undertaken that he will not travel abroad without obtaining permission from the Courts in question.

7. Then the only question to be considered is whether the red corner notice issued to the petitioner will prevent the re-issue of a passport to the petitioner. I am of the view that in the light of the law laid down by the Supreme Court in ***Bhavesh Jayanti Lakhani*** (*supra*), the mere fact that a red corner notice is pending against a citizen of India is no ground to deny passport services to him. The relevant portions of the judgment in ***Bhavesh Jayanti Lakhani*** (*supra*) reads thus:

“39. It is beyond any doubt or dispute that no request for extradition has been received by the Government of India.



It could act only when a request is received. It is accepted at the Bar that a red corner notice by itself cannot be a basis of arrest or transfer of an Indian citizen to a foreign jurisdiction. There is furthermore no dispute that the Act cannot be bypassed in red corner cases concerning Indian citizens. Hence, the Extradition Treaty is subject to the provisions of the Act.

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64. In fact, Interpol's "red notices" often function as de facto international arrest warrants and countries issue warrants immediately upon receipt of such a notice. However, they do so with the understanding that a request for extradition with supporting evidence will follow the red notice, without delay. The suspect must then go through the standard extradition process. The bottom line is that "warrants to arrest suspects must have legal authority in the jurisdiction where the suspect is found" and Interpol red notices do not have such authority. They are primarily a means of facilitating communication between police agencies and the success of the Interpol system still depends entirely upon voluntary cooperation. They, however, do not entirely lack external effects.

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96. Extradition of a fugitive criminal from India to any other foreign country, irrespective of the fact as to whether any treaty has been entered into or with that country, is within the exclusive domain of the Central Government. The extradition of a person from India to any other foreign country is covered by the Parliament Act, namely, the Act. Keeping in view the Constitution of Interpol vis-à-vis the resolutions adopted by CBI from time to time, although a red corner notice per se does not give status of a warrant of arrest by a competent court, it is merely a request of the issuing authority to keep surveillance on him and provisionally or finally arrest the wanted person for extradition.”

The learned Senior Counsel for the petitioner is right in contending that despite the fact that the petitioner was convicted in Qatar as early as in the year 2020, no steps have been taken to extradite the petitioner from India even after the passage of more than four years after the conviction. In such circumstances, the denial of passport services to the petitioner would amount to a negation of the right of the petitioner to travel abroad, which has been held to be a facet of Article 21 of the Constitution of India. The Constitution Bench in ***Satwant Singh Sawhney v. D. Ramarathnam; AIR 1967 SC 1836***



referred to the Full Bench judgment of this Court in ***Francis Manjooran v. Government of India, Ministry of External Affairs, New Delhi, ILR (1965) 2 Kerala 663*** and held:-

“28. A full Bench of the Kerala High Court in Francis Manjooran v. Government of India, Ministry of External Affairs, New Delhi held that the expression “personal liberty” took in the right to travel. M.S. Menon, C.J., observed:-

“The right to travel, except to the extent provided in Article 19(1) (d), is within the ambit of the expression “personal liberty” as used in Article 21....”

Raman Nayar, J., held that the right of free movement whether within the country or across its frontiers, either in going out or in coming in, was a personal liberty within the meaning of Article 21. Gopalan Nambiyar, J., observed that the right to travel beyond India, or at least to cross its frontiers was within the purview of Article 21 and that personal liberty in Article 21 was not intended to bear the narrow interpretation of freedom from physical restraint.”

In ***Maneka Gandhi v. Union of India; (1978) 1 SCC 248*** it was held:-

“48. In Satwant Singh Sawhney v. D. Ramarathnam,



Assistant Passport Officer Government of India, New Delhi this Court ruled by majority that the expression “personal liberty” which occurs in Article 21 of the Constitution includes the right to travel abroad and that no person can be deprived of that right except according to procedure established by law.”

In my view, **in the facts and circumstances of this case**, the denial of passport services to the petitioner because a red corner notice has been issued would be tantamount to a deprivation of the right of personal liberty enshrined in Article 21 of the Constitution of India.

8. Therefore, this writ petition is allowed. Exts.P10 and P15 orders are quashed. The 3rd respondent is directed to process the application filed by the petitioner for the re-issue of his passport in accordance with the law and subject to compliance with usual formalities. It is made clear that the petitioner shall not leave India without obtaining permission from the Judicial First Class Magistrate Court, Chalakkudy and the Judicial First Class Magistrate Court – III, North Paravur. It is also made clear that since Ext.P1 permits the re-issuance of a passport for five years and Ext.P2 order permits the issuance of a passport only for three years, the petitioner is entitled to a passport only for a period of three years and not for a

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period of five years.

The writ petition is ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

scl/DK



APPENDIX OF WP(C) 2723/2025

PETITIONER EXHIBITS

- | | |
|--------------------|--|
| Exhibit P1 | A TRUE COPY OF THE ORDER DATED 21.02.2024, OF THE JFCM-III NORTH PARAVUR IN CRL.MP.869/2024 IN C.C.NO.246/2022 |
| Exhibit P2 | A TRUE COPY OF THE ORDER DATED 02.08.2024 IN CRLMP.NO.6124/2024 IN C.C.NO.688/2020 BY THE JFCM CHALAKKUDY |
| Exhibit P3 | A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO.23948/2024 DATED 14.10.2024 |
| Exhibit P4 | A TRUE COPY OF THE EMAIL SENT BY THE PASSPORT AUTHORITIES TO THE PETITIONER DATED 25.10.2024 |
| Exhibit P5 | A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER THROUGH EMAIL DATED 26.10.2024 |
| Exhibit P6 | A TRUE COPY OF THE SHOW-CAUSE NOTICE ISSUED TO THE PETITIONER FROM THE REGIONAL PASSPORT OFFICE, COCHIN, WITH LETTER REF.NO.SCN/319831551/24 DATED 25.10.2024 |
| Exhibit P7 | A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE SHOW-CAUSE NOTICE, DATED 29.10.2024 |
| Exhibit P8 | A TRUE COPY OF THE EMAIL DATED 30.10.2024 SENT TO THE PETITIONER BY THE PASSPORT AUTHORITIES |
| Exhibit P9 | A TRUE COPY OF THE EMAIL SENT BY THE PETITIONER TO THE PASSPORT AUTHORITIES DATED 30.10.2024 |
| Exhibit P10 | A TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 30.10.2024 ALONG WITH COVERING LETTER REF. NO: REN/319867673/24 DATED 30.10.2024 |

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| Exhibit P11 | A TRUE COPY OF THE LIST OF SPECIFIC OFFENCES FOR WHICH RED NOTICES MAY NOT BE ISSUED DOWNLOADED FROM THE INTERPOL WEBSITE |
| Exhibit P12 | TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 06.11.2024 |
| Exhibit P13 | A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WRIT PETITION NO.43039/2024 DATED 06.12.2024 |
| Exhibit P14 | A TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER DATED 16.12.2024 BEFORE THE 2ND RESPONDENT |
| Exhibit P15 | A TRUE COPY OF THE ORDER IN APPEAL PASSED BY THE 2ND RESPONDENT DATED 13.01.2025 |
| Exhibit P16 | A TRUE COPY OF THE PAGES OF THE PETITIONER'S PASSPORT CARRYING STAMPS EVIDENCING HIS TRAVELS OUTSIDE INDIA AFTER 2022 |
| Exhibit P17 | A TRUE COPY OF THE RED NOTICE ISSUED BY THE INTERPOL DATED 01.03.2022 |