Neutral Citation No. - 2025:AHC-LKO:24961-DB

A.F.R.

High Court of Judicature at Allahabad
Lucknow

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Reserved on : 19.03.2025
Delivered on : 01.05.2025

Court No. - 2
Case :- WRIT - C No. - 1775 of 2025
Petitioner :- Mohd. Talha
Respondent :- Uoi Thru. Its Secy. Ministry Of External Affairs New Delhi And 2 Others
Counsel for Petitioner :- Arshad Jameel,Mohd Amir Shazad,Mohd. Salman
Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Rajan Roy,J.
Hon'ble Om Prakash Shukla,J.

(Per : Om Prakash Shukla, J.)

(1) Heard learned Counsel for the petitioner, Shri S.B. Pandey, learned Senior Advocate/D.S.G.I. assisted by Shri Varun Pandey, learned Counsel for Union of India and learned Standing Counsel for the State.

(2) The petitioner has invoked the writ jurisdiction of this Court seeking writ of mandamus directing the opposite party No.2-Regional Passport Officer, Regional Passport Office, Gomti Nagar, Lucknow, for issuance of passport to him as per the notification dated 25.08.1993 issued by the Ministry of External Affairs, New Delhi.

(3) Shorn of unnecessary details, it is borne from the writ petition that the petitioner, a practicing Advocate of this Court, had applied for issuance of fresh passport vide Application No.LK3069688351424, wherein certain adverse report was submitted by the concerned police to the Passport Officer relating to pendency of two criminal case against the petitioner. Two criminal cases as stated in the writ petition being (i) Case Crime No. 113/13 under Sections 147/504/506/507/354/354D IPC and (ii) Case Crime No. 123/11 under Sections 323/504/506 IPC.

(4) It is the case of the petitioner that as an under trial, he filed an application in Case Crime No. 113/13 before the Court of ACJM, CBI (A), Lucknow on 05.06.2024, which came to be disposed of vide order dated 30.07.2024 on the grounds that there is no need to take permission from the trial Court for obtaining Passport in view of judgment dated 25.06.2024 rendered by a Co-ordinate Bench in Writ-C No. 5587 of 2024 : Umapati Vs. Union of India and 3 others. As far as the other criminal case, bearing Case Crime No. 123/11, is concerned, the petitioner has enclosed a copy of the report submitted by Sub-Inspector, Police Station Chowk, Lucknow to the Court of ACJM, CBI (AP) as Annexure No.4, whereby the Sub-Inspector, Police Station Chowk, Lucknow reported to the Court of ACJM, CBI (AP) that in Case Crime No. 123 of 2011,

the then Investigating Officer had forwarded/submitted Final Report No. 45 dated 16.07.2011 to the Court concerned.

(5) It appears that the petitioner armed with the aforesaid orders approached the opposite party No.2-Regional Passport Officer, whereupon he was advised that verification would be done of the said orders by the concerned police and the Regional Passport Officer would act accordingly.

(6) In the aforesaid background, it is the grievance of the petitioner that since no passport has been issued to him, a direction may be given to the concerned authority for that said purpose and as such has relied on the Notification of the Ministry of External Affairs, New Delhi dated 25.08.1993.

(7) According to the learned Counsel for the petitioner, since the trial Court has rejected his prayer for grant of NOC vide order dated 25.06.2024 on the ground that as per judgment in Umapati (supra), there is no requirement of prior permission from the trial Court for issuance/renewal of passport, as such, there was no occasion for the opposite party no.2-Regional Passport Officer not to renew/re-issue him Passport as per the prevailing notification.

(8) Per contra, Shri S.B. Pandey, learned D.S.G.I. has stated that on a plain reading of the judgment passed by a Co-ordinate Bench

of this Court in Umapati's case, it is apparent that the said decision has not noted any of earlier judgments passed by Co-ordinate Benches of this Court relating to similar issue nor the Notifications of the Ministry of External Affairs, New Delhi dated 25.08.1993 and Office Memo dated 10.10.2019 issued by the Government of India under Section 22 of the Passport Act, 1967, which it appears were not brought to the notice of the said Co-ordinate Bench.

(9) Shri Pandey also invited our attention to earlier decisions of this Court such as decision dated 20.11.2018 passed in Writ Petition No.31723 (M/B) of 2018 '**Salim Kumar vs. Union of India & Ors.**' wherein this aspect as also GSR 570(E) dated 25.08.1993 was taken into consideration as also decision of Delhi High Court and thereafter, direction was issued to the petitioner to move an appropriate application before the court of criminal jurisdiction where the trial was pending against him seeking permission to go abroad. Consequential direction was also issued for consideration of issuance of passport if such permission is granted by the court below. He has also placed before us another Division Bench judgment dated 03.12.2022 rendered in Writ-C No.8621 of 2022 '**Shiv Shankar vs. Union of India & Ors.**' wherein similar view has been taken after considering the Notification dated 25.08.1993 and 10.10.2019 as also provisions of the Passport Act, 1967. He has also

referred to a similar decision dated 21.06.2022 rendered in Writ-C No.3617 of 2022 by Division Bench of this Court in the case of **'Smt. Rashmi Kapoor vs. Union of India & Ors.'** wherein also law has been elucidated and directions have been issued accordingly in a case where criminal cases were pending and passport was not being issued. He has also referred to a recent decision dated 21.10.2024 rendered by Division Bench of which one of us (Hon'ble Rajan Roy, J.) was a member in Writ-C No.8874 of 2024 **: Shah Alam vs. Union of India & Ors.'** on the same subject and he has then referred to the judgment dated 25.06.2024 rendered by a Co-ordinate Bench in Writ-C No.5587 of 2024 **'Umapati vs. Union of India & Ors.'** wherein it has been held that there is no provision in the Passport Act requiring any permission to be taken from the court of criminal jurisdiction where the criminal trial are pending for issuance of a passport and a direction has been issued to the Passport Officer to take a decision on the application of the petitioner. The submission is that this judgment dated 25.06.2024 has been rendered in ignorance of and without considering earlier judgments on the same subject by the Co-ordinate Benches. He has also invited our attention to various judgments of Hon'ble the Supreme Court wherein the law of precedents has been discussed and it has been held that in the event, there being conflicting judgments of Co-ordinate

Benches, it is the earlier judgment which should be followed especially in a case where the subsequent Division Bench has not considered the earlier Division Bench judgment. These decisions have been rendered in Civil Appeal No.5707 of 2023 (@Special Leave Petition (Civil) No.18727 of 2023) **'Union Territory of Ladakh and ors. vs. Jammu & Kashmir National Conference and Ors.'** dated 06.09.2023; (2017) 16 SCC 680 **'National Insurance Company Limited v Pranay Sethi'** which in fact is a Constitution Bench judgment on the same issue; **'Chandra Prakash and Ors. vs. State of U.P.'** (2002) 4 SCC 234; **'Union of India vs. Raghubir Singh'** (1989) 2 SCC 754; **'Pradip Chandra Parija and others v. Pramod Chandra Patnaik'** (2002) 1 SCC Page 1; **'Rattiram vs. State of Madhya Pradesh'** (2012) 4 SCC 516; **'National Telephone Company Ltd vs Post Master General'** 1913 AC546 (HL) and **'Sandeep Kumar Bafna vs. State of Maharastra'** (2014) 6 SCC 623. He has specifically referred to the decision of Hon'ble the Supreme Court in the case of Rattiram (supra) wherein the question of conflict between two judgments rendered by benches of equal strength specifically came up for consideration and a Three Judge Bench of Hon'ble the Supreme Court relying upon Constitution Bench decision in Raghubir Singh (supra) and other decisions on the subject held that earlier decision was a binding precedent and when in

ignorance of it, subsequent decision has been rendered, the latter would not constitute a binding precedent as concept of *per incuriam* would come into play.

(10) Having heard the learned Counsel for the parties, this Court finds that the core issue engaging the attention of this Court is whether there is any requirement under the Passport Act, 1967 for an under trial to obtain permission/'NOC' from the Court where his trial is pending for going abroad and for issuance of Passport or for its renewal.

(11) This Court in its endeavour to decide the said issue wishes to put on record that more than 50 years ago, the Hon'ble Supreme Court vide its celebrated Judgment passed in "**Satwan Singh Sawhney Vs. Union of India**" : AIR 1966 SCC 1836 held and read the right of a citizen to travel into the right to personal liberty as per Article 21 of the Constitution of India. In consequence to the above-mentioned judgment, Passport Bill was introduced and later was enacted as "The Passport Act, 1967". The essence of the said legislation and the subsequent passport rules of 1980 framed therein was with a purpose to provide/issue passports/travel documents and regulate the departure of citizens from India and matters incidentals and ancillary thereto.

(12) Section 3 of the Passport Act, 1967 invariably says that no person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid Passport or travel document.

(13) Section 5 of the Passport Act, 1967 relates to filing of application for Passports, travel document etc., wherein the Passport Authority is empowered to issue and/or refuse Passport as per the terms of the said provision.

(14) However, Section 6 of the Passport Act, 1967 relates to provisions for specific refusal of Passport, travel documents etc., wherein various conditions for refusal have been enumerated therein. Section 6 of the Passport Act, 1967, which specifically entails refusal of Passport, travel documents etc., is as under :-

> "**6. Refusal of passports, travel documents. Etc.—**
>
> (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—
>
> (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
>
> (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
>
> (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

> (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.
>
> (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 sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—
>
> (a) that the applicant is not a citizen of India;
>
> (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
>
> (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
>
> (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
>
> (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
>
> (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
>
> (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
>
> (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
>
> (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

(15) Since this Court is dealing with the issue relating to issuance of Passport during the pendency of proceeding before a criminal court in India, the relevant provision for consideration would be

Section 6 (2) (f) of the Passport Act, 1967, which, in categorical terms mandates the Passport Authority to refuse to issue a Passport or travel document for visiting any foreign country under Clause (c) of sub-section (2) of Section 5 on the ground that the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. The word 'shall' used in Section 6 (2) of the Passport Act, 1967 indicates a mandatory or binding nature of the provision and does not give any room for discretion. Section 6 (2) (f) is a reasonable restriction imposed by law within the framework of Article 19 (f) of the Constitution of India and debars issuance of passport where proceedings in respect of an offence alleged to have been committed by the applicant is pending before a criminal Court in India.

(16) Section 22 of the 1967 Act is an exception carved out from the restrictions imposed by the Act itself. It reads as under :-

> **"22. Power to exempt.—**
>
> Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,—
>
> (a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and
>
> (b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions."

(17) The aforesaid Section 22 confers on the Central Government the power to exempt where it is of the opinion that it is necessary or expedient in the public interest to do so, by Notification in the Official Gazette. Such exemption by Notification includes exemption of any person or class of persons from the operation of all or any of the provisions of the Act or the Rules made thereunder. It is in this regard, so as to provide such exemption, the Central Government exercising powers conferred under Section 22 of the Passport Act, 1967, has published Official Gazette notification [GSR 570 (E) dated 25.08.1993]. For the sake of reference relevant portion of Official Gazette [GSR 570 (E) dated 25.08.1993] is extracted hereunder :-

"MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION
New Delhi, the 25th August, 1993

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 exempts 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;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exeeding one year, and does not specify the validity of the pass-port, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

[No.VI|401|37|79]
Sd/-
L.K. Ponappa, Jt. Secy, (CPV)"

(emphasis supplied)

(18) In view thereof, it can be safely deduced that the provision of Section 6 (2) (f) of the Act, 1967 does not impose an absolute

bar on the issuance of passports to individuals against whom criminal proceedings are pending, as, in that regard Section 22 of the Passport Act, 1967 provides power to the Central Government for grant of exemptions from the application of all or any provisions of the Passport Act, 1967, which has been exercised by issue of notification dated 25.08.1993.

(19) This Court finds that under Official Gazette Notification GSR 570 (E) dated 25.08.1993, the Central Government has exempted individuals facing pending criminal proceedings from the restrictions imposed under Section 6 (2) (f) of the Act, 1967, provided they obtain order from the concerned Court permitting them to depart from India. Further, in case the concerned Court grants permission, then a passport may be issued for the duration specified in the order. In case, no period is mentioned, then, the passport shall be issued for a maximum of one year. In the absence of Court's order permitting to depart from India, the restriction under Section 6 (2) (f) of 1967 Act remains in force which prevents issuance or renewal of the Passport.

(20) The aforesaid notification under Section 22 of the Act, 1967 has statutory backing and force. The requirement of obtaining 'permission' or 'NOC' for an under-trial to go abroad, is a statutory requirement under the Act, 1967.

(21) As to the period for which the passport can be issued, it is easily discernible from the aforesaid notification that in case of sub-clause (i), (iii) and (iv) of Clause (a), the Court not only grants permission to the under-trial to depart from India, but specifies a period therefor, in which case the Passport Authority is bound to issue the passport for that said period as granted by the Court or in case the period of travel is less than one year as per sub-clause (iii) of Clause (a) for a period of one year.

(22) It is seen that the Central Government has deliberately left the period for issuance of Passport to the discretion of the trial Court. However, if the Court chooses to grant permission to the applicant to depart from India but abstains from specifying the period therefor, i.e., the trial Court refuses to exercise its discretion in the first instance as aforesaid, then the power of determining the period reverts back to the residuary authority of the Central Government, which is conferred on the Central Government in the first place by the source of its power, that is, Section 22 of the Act, 1967 and, in such a case, a reasonable period of one year has been fixed by the Central Government, which this Court finds to be in consonance with Section 22 of the parent statute that is the Passport Act, 1967 as well as Article 19 (5) of the Constitution of India, read in the context of Section 6 (2) (f) of the 1967 Act.

(23) While things stood thus, there had been a confusion relating to the procedure for processing of the Passport Application amongst the authorities, wherein the Ministry of External Affairs published Office Memorandum, bearing No. VI/401/I/5/2019 dated 10.10.2019 prescribing guidelines/ procedure for processing applications under Section 6 (2) (f) of the Passport Act, 1967. As per the said Memorandum also, the applicant is required to submit an application/undertaking to the Passport Authorities, disclosing all pending criminal cases. If any cases are pending against the under-trial, the said under-trial shall obtain 'No Objection Certificate' (NOC) from the concerned Court seeking leave to depart India. Subsequently, Police Verification (PV) shall be conducted by the police authorities and subject to the police verification report, passport authorities may issue or reject issuance of passport by giving reasons. It may be reminded that the said Memorandum is an extension of the earlier Notification inasmuch as the said Memorandum of 2019 itself records that the provisions of GSR 570 (E) be strictly applied in all case as it being a statutory notification and forms part of the rules.

(24) In the given circumstances, although Section 6 (2) (f) of the Passport Act, 1967 clearly provides that if the proceedings in respect of an alleged offence committed by the petitioner are pending before the criminal Court in India, then, it shall

constitute a ground for refusal of issuance of Passport, however, by virtue of the beneficial statutory notification of GSR 570 (E) (dated 25th August, 1993) read along with the Office Memorandum dated 10.10.2019, the petitioner on submission of 'No Objection Certificate' from the Court where the proceedings are pending, shall be exempted from the operation of Section 6 (2) (f) of the Passport Act, 1967 and he/she would be entitled to go abroad and for this NOC issuance/renewal of the passport is implicit.

(25) A plain reading of the provisions of Passport Act, 1967 and the beneficial Notification issued in terms of Section 22 of the Act, 1967 leads to the sole logical conclusion that in all cases wherein criminal proceedings are pending and have been denied the issuance of passport by the operation of Section 6 (2) (f) of the Passport Act, 1967, the under-trial, as a condition precedent has to first seek permission or NOC from the Court concerned, wherein the trial is pending, to travel abroad or depart, for which essentially a passport is required and then only as a condition subsequent apply to the passport authority for issuance of the passport for a particular period as mentioned in the permission order itself or for the period as mentioned in GSR 570(E) dated 25th of August, 1993.

(26) However, misinterpreting Section 6 (2) (f) of Act, 1967 and Office Memorandum No. VI/40/1/5/2019 dated 10.10.2019, several under-trails have been obtaining 'No Objection Certificates' (NOCs) from the Court for the re-issuance of passports, instead of securing order permitting applicant to depart from India. Accordingly, the Ministry of External Affairs, with the intent to clarify the issue, published an Office Memorandum (OM) dated 06.12.2024 through its PSP Division, stating that there is no legal provision requiring an applicant to obtain permission or 'No Objection Certificate' (NOC) from the concerned Court for the issuance or re-issuance of a passport. Instead, the applicant is required to obtain permission from the concerned Court specifically to depart from India or travel abroad. Relevant portions from the Office Memorandum (OM) dated 06.12.2024 is extracted hereunder :-

> "8. It may be noted that there is no such provision for seeking permission/NOC from the court concerned for issuance of passport; instead it is permission to depart from India. In case the applicant is unable to provide the prescribed documents, PIA may issue a refusal order under Section 6 of the Passport Act, 1967 prescribing provisions for appeal."

(27) It goes without saying that as per Official Gazette [GSR 570 (E) dated 25.08.1993], relaxation under Section 6 (2) (f) of the Passport Act, 1967 applies to only those persons who produce

orders from the Court concerned permitting them to depart India, otherwise, the rigour of refusing issuance of passport would follow consequently.

(28) Apparently, it seems that when the petitioner applied for such NOC, the concerned trial Court passed an order stating that such permission was not required to be given by it. We have already discussed relevant provisions of Passport Act, 1967 and the notifications issued thereunder which do require such permission to be taken from the Court where criminal trial is pending. We have also referred to the earlier judgments of several Co-ordinate Benches where the law has been discussed and clarified in this regard. In this context, we have also taken into consideration the submissions of learned Senior Counsel and Deputy Solicitor General of India. We, accordingly, set-aside the order dated 30.07.2024 passed in Case No. 2397 of 2023 arising out of Case Crime No. 113 of 2013 by the Chief Judicial Magistrate (A.P.), Lucknow in exercise of our *suo moto* inherent powers. Consequently, the application of the petitioner shall stand revived and will be considered afresh in the light of what has been discussed hereinabove and a decision shall be taken within a period of three weeks. The aforesaid order dated 30.07.2024 has been passed in the context of Case Crime No.113 of 2013 as referred earlier, however, there is another criminal case against the petitioner, bearing Case Crime No.

123 of 2011, in respect to which, some document has been filed by the petitioner indicating submission of a Final Report by the Investigating Officer, however, there is no order regarding its acceptance, therefore, the petitioner will have to find out as to whether the Final Report has been accepted, if so, produce the said order before the Regional Passport Officer. If it has not been accepted or on a protest application, same is being proceeded, then, he will have to seek permission from the Court of criminal jurisdiction, where the said case is pending on the same lines as discussed hereinabove. If, the NOC/Permission for going abroad is granted by the aforesaid Courts, then, the petitioner shall submit the same before the Regional Passport Officer concerned, who shall then process the application of the petitioner for issuance of passport as per law and take a decision within a period three weeks of submission of such NOC/Permission.

(29) The writ petition is **allowed**.

(Om Prakash Shukla, J.) **(Rajan Roy, J.)**

Order Date :- 01.05.2025
Ajit