

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU****WP(C) No. 3093/2024****Abdul Hamid**

Through: Mr. S. S. Ahmad, Advocate
Mr. Zulkernain Choudhary, Advocate

Vs.**Union of India and Anr.**

Through: Mr. Vishal Sharma, DSGI
Ms. Palavi Sharma, Advocate vice
Mr. Ravinder Gupta, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
07.04.2025

1. Through the medium of present petition, the petitioner has challenged communication dated 26.12.2024 issued by respondent No. 2, whereby the petitioner has been asked to furnish proper clarification/ explanation regarding the adverse Police report and to furnish 'NOC' from the concerned Court.

2. It appears that the petitioner was holding Indian Passport No. Z2758821 issued on 03.12.2014, which was valid upto 02.12.2024. On 29.10.2024, the petitioner applied for renewal/fresh passport in the office of respondent No. 2. It seems that vide communication dated 12.12.2024, issued by respondent No. 2, the petitioner was intimated regarding adverse Police verification report and he was informed regarding his involved in some FIR/ court case. Accordingly, the petitioner was directed to visit the office of respondent No. 2 and clarify the issue. It has been submitted that pursuant to the aforesaid communication, the petitioner furnished a comprehensive

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explanation to respondent No. 2 and intimated him that the ACB has filed a charge sheet against the petitioner in respect of FIR No. 5/2021 for commission of offences under Sections 5(1)(d), read with section 5(2) of the J&K PC Act and section 120-B RPC before the Court of Additional Sessions Judge (Anti-corruption Cases), Jammu. Respondent No. 2 was further informed that the petitioner has challenged the aforesaid proceedings before this Court by way of WP(C) No. 587/2021, titled *Abdul Hamid and others vs. UT of J&K and Ors.* and CRM(M) No. 928/2024, titled *Abdul Hamid and others vs. UT of J&K and others*, which are pending before this Court. It has been further submitted that pursuant to the clarification furnished by the petitioner, the impugned communication came to be issued by respondent No. 2.

3. The petitioner has challenged the impugned communication on the grounds that the same is illegal, arbitrary and contrary to the spirit of the Passports Act, 1967. It has been submitted that right to travel abroad is a fundamental right and the petitioner cannot be denied passport accept in accordance with law. It has been further contended that the impugned communication is violative of principles of natural justice and reflects *mala fide* exercise of power on the part of respondent No. 2.

4, The respondents have filed their reply to the writ petition, in which it has been submitted that after receipt of the application from the petitioner for issuance passport in Re-issue category, Personal Particular Form was initiated to the Sr. Superintendent of Police, Jammu for obtaining the Police report. It has been further submitted that as per the Police verification report dated 09.12.2024, the petitioner is involved in case FIR No. 5/2021 for offences under Section 5(d), read with Section 5(2) of the PC Act of Police Station,

ACB. It has also been submitted that the petitioner cannot be granted passport without NOC from the Court, in which the case of the petitioner is pending.

5. I have heard learned counsel for the parties and perused record of the case.

6. Right to travel abroad has been elevated to the status of fundamental right in terms of the ratio laid down by the Supreme Court in case of **Menaka Gandhi vs. Union of India and Another, AIR 1978 SC 597**, therefore, passport to an Indian citizen, cannot be refused or withheld without adopting the procedure prescribed under law. The procedure for issuance of passport has been prescribed under the Passports Act, 1967. Section 6 of the said Act enumerates the grounds on which the passport or travel document to a citizen of India can be refused. It reads as under:

Section 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 foreign 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.

7. Clause (f) of sub-section (2) quoted above, provides that if the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India, it can form a ground for refusal of the passport or travel document. However, notification No. GSR 570(E) dated 25.08.1993, issued by the Government of India, Ministry of External Affairs, PSP Division, provides that even in cases where an applicant is facing criminal proceedings before a Criminal Court in India, passport or travel document can be issued to him, subject to certain conditions. It would be apt to reproduce below the said notification :

GSR 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. GSR 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 subsection (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 of 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;
- (iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, 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.”

8. From a perusal of the aforesaid notification, it is clear that notwithstanding the provisions contained in Section 6(2)(f) of the Passport Act, an applicant can be issued passport/ travel document subject to the appropriate orders from the Court, where the proceedings are pending.

9. In the instant case, admittedly the proceedings in respect of a criminal case are pending against the petitioner before the court of Additional Sessions Judge (Anticorruption Cases) Jammu, therefore, if the said Court grants ‘NOC’ in favour of the petitioner, respondent No. 2 would be well within its powers to issue passport/ travel document in favour of the petitioner notwithstanding pendency of a criminal case against the petitioner.

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10. In view of the above, the writ petition is **disposed of** with a liberty to the petitioner to approach the concerned criminal Court with an application for seeking appropriate orders for issuance of passport/travel document in his favour. If and when such an application is made by the petitioner before the concerned criminal court, the same shall be considered by the said court on its own merits, notwithstanding the stay of the proceedings that may have been ordered by this Court in the petitions filed for challenging the charge sheet.

(SANJAY DHAR)
JUDGE

Jammu
07.04.2025
Karam Chand/Secy.

