

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
W.P. No.18701 of 2024**

(RICHHA JOHRI OJHA

Vs

CENTRAL BUREAU OF INVESTIGATION)

Appearance:

(BY SHRI SIDDHARTH SHARMA - ADVOCATE FOR PETITIONER)

**(BY SHRI SUSHIL CHANDRA CHATURVEDI – ADVOCATE FOR
RESPONDENT)**

Reserved on	29.11.2024
Delivered on	16.12.2024

ORDER

The present petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking following reliefs:-

7.1 The order impugned i.e. Annexure P/1 may kindly be quashed, and/or

7.2 The application filed by the petitioner for grant of No-Objection Certificate may kindly be allowed.

2. In brief, the facts of the case are that the petitioner is facing criminal trial in connection with Crime No.285/2014 (S.T. No.30327/2014 wherein she has already been granted anticipatory bail by the Hon'ble Supreme Court vide order dated 02.07.2015. However, the petitioner's grievance is that she had filed an application for renewal of her passport on 03.04.2024 in the Regional Passport Office Delhi which was issued to the petitioner in the year 2004 and thereafter renewed in the year 2014 and had expired on 23.10.2024. The said application filed by the petitioner was rejected on the ground of since a criminal case is

pending against her, therefore, NOC be produced from the concerned trial Court. Thereafter the petitioner had preferred an application for grant of NOC before the learned trial Court, which was rejected vide impugned order dated 22.05.2024 (Annexure P/1). Hence, challenging the impugned order dated 22.05.2024 (Annexure P/1), the present petition has been filed.

3. Learned counsel for the petitioner submits that pendency of criminal case cannot be a ground for refusal of grant of NOC in favour of petitioner as adjudication of the criminal case would take time. The petitioner has cooperated with the investigation and she is facing criminal trial in a case where FIR had been registered on 16.07.2014 and thereafter, the supplementary charge-sheet had been filed in the year 2019.

4. Learned counsel for the petitioner further pointed out that the passport endorsement shows that the petitioner had travelled abroad and came back to India and as the petitioner is already holding the passport since last ten years and she had never tried to fled away from the court of justice, right to possess or hold passport cannot be declined on the ground that criminal case is pending. To bolster his submissions, learned counsel for the petitioner has relied upon the order passed by Hon'ble Supreme Court in the case of **Vangla Kasturi Rangacharyulu passed in Criminal Appeal No.1342/2017 on 27.09.2021**, the order of Hon'ble High Court of Telengana at Hyderabad passed in **Venkata Siva Kumar Yadhnepudi Vs. Union of India reported in 2024 SCC Online TS 402**, the judgment of Hon'ble Apex Court rendered in the case of **Sumit Mehta Vs. State of N.C.T. of Delhi reported in (2013) 15 SCC 570**, the order of Hon'ble High Court of Judicature at

Madras passed in (Karti P. Chidambaram Vs. The Regional Passport Officer) W.P. No.1190 of 2024 on 28.03.2024, the order passed by the coordinate Bench of this Court at Indore in (Hardik Shah Vs. Union of India & Anothr) W.P. 5692/2020 on 07.12.2021 and (Ritesh Ajmera Vs. Union of India & Anr.) W.P. No.6229/2023 on 09.05.2023 and the order passed by High Court of Telangana in W.P. No.2802 of 2024 on 14.03.2024.

5. Per contra, learned counsel for respondent submitted that the present Writ Petition, seeking a writ of certiorari, is not maintainable, as it is filed to challenge judicial order passed by special court. It was submitted that the impugned order forming subject matter of challenge in this petition being order passed in exercise of judicial functions, its validity or propriety cannot be questioned in a petition under Article 226 of the Constitution and the remedy of the petitioner lies in an application under Article 227 of the Constitution of India. Hence, it is prayed that the present petition be dismissed as not maintainable.

6. Heard learned counsel for the parties and perused the record.

7. So far as maintainability of the present petition is concerned, a similar issue had been arisen in "**State of Jharkhand Vs. Surendra Kumar Shrivastava and others**" (2019) 4 SCC 214 wherein in Para 6.1, it was held as under:-

"6.1. With respect to the first submission of the learned counsel for the appellants that the writ petition filed by Respondents 1 to 3/plaintiffs for a writ of certiorari to quash the order dated 7-4-2015 passed by the Civil Judge (Junior Division) and the order dated 21-4-2015 passed by the District Judge was not maintainable in view of the judgment of the three-Judge Bench in Radhey Shyam Vs. Chhabi Nath, there cannot be any dispute to the law laid down by this Court

in Radhey Shaym Vs. Chhabi Nath, but in the facts of the present case, we do not propose to unsettle the judgment of the High Court on the above ground due to two reasons, firstly, in the High Court, the appellants, who were respondents in the writ petition, did not challenge the maintainability of the writ petition under Article 226 of the Constitution of India, and secondly, had the appellants raised the above objection regarding maintainability of the writ petition, the course open for plaintiffs/Respondents 1 to 3 was to amend the cause-title of the writ petition under Article 227 of the Constitution, and such a writ petition under Article 227 would have been clearly maintainable."

8. Though the writ petition was filed under Article 226 of the Constitution of India, such labeling is irrelevant and liable to be ignored, in view of the judgment rendered in Surendra Kumar Srivastava (supra) wherein the Hon'ble Supreme Court had observed that had an objection to labeling of the writ petition was raised the same could be corrected by the writ petitioner by amending the cause title of the writ petition under Article 227 of the Constitution of India.

9. So far as merits of the matter are concerned, a bare perusal of the impugned order dated 22.05.2024 issued to the petitioner by learned Special Judge (Vyapam) CBI, Gwalior herein indicates that the application for grant of NOC for passport services to the petitioner herein was denied on account of pendency of criminal case against the petitioner. It is the specific case of the petitioner that pendency of criminal cases against the petitioner should not lead to denial of passport facilities to the petitioner and further that petitioner's passport should be renewed for a period of ten years.

10. This Court opines that pendency of criminal case cannot be the ground to deny passport facilities to the petitioner since petitioner's right to personal liberty not only includes petitioner's right to travel abroad, but also petitioner's right to possess or hold a passport.

11. It is also relevant to note that the renewal of passport of the petitioner cannot be refused on the ground of the pendency of the criminal case against the petitioner and the said action is contrary to the procedure

laid down under the Passports Act, 1967 and also the principle laid down by the Hon'ble Supreme Court in the case of **Vangala Kasturi Rangacharyulu (supra)**.

12. It is also relevant to note that the Apex Court in the case of Vangala Kasturi Rangacharyulu's (supra) had an occasion to examine the provisions of the Passports Act, 1967, pendency of criminal cases and it was 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 (01) 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 issue the passport of the applicant without raising the objection relating to the pendency of the aforesaid criminal appeal in Supreme Court.

13. 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."

14. The Apex Court in "**Maneka 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.”

15. 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 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.”

16. The Central Government has also issued G.S.R.No.570(E), dated 25.08.1993, which is extracted below:

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 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.

(No.VI/401/37/79)

L.K.PONAPPA, Jt. Secy.(CPV

17. The Division Bench of Bombay High Court vide Judgment dated 30.11.2016 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."

18. Taking into consideration the aforesaid facts and circumstances of the case, and duly considering the law laid down by the Apex Court and other High Courts in the various Judgments (referred to and extracted above), the Writ Petition is allowed, the impugned order dated 22.05.2024 is set aside and learned Special Judge (Vyapam), CBI Gwalior is directed to re-consider the application for grant of NOC for passport services of the petitioner, duly taking into consideration the law laid down by the Apex Court and the other High Courts in the various Judgments (referred to and extracted above) and pass appropriate orders, in accordance to law, within a period of three (03) weeks from the date of receipt of the copy of the order, without reference to the Criminal Proceedings pending against the petitioner in S.T. No. 30327/2014 before learned Special Judge (Vyapam) CBI, Gwalior and also the Gazette Notification issued by the Central Government vide GSR No.570(E) dated 25.08.1913, subject to the following conditions:

i) The petitioner herein shall submit an undertaking along with an affidavit in S.T. No.30327/2014 pending before learned Special Judge (Vyapam), CBI Gwalior stating that she will not leave India during pendency of the said case without permission of the Court

and that she will cooperate with trial Court in concluding the proceedings in the said case.

ii) On filing such an undertaking as well as affidavit, the trial Court shall issue a certified copy of the same within two (02) weeks therefrom;

iii) The petitioner herein shall submit certified copy of aforesaid undertaking before the concerned Passport Officer for renewal of her passport;

iv) The concerned Passport Officer shall consider the application of the petitioner for renewal of passport in the light of the observations made by this Court herein as well as the contents of the undertaking given by the petitioner for renewal of his passport in accordance with law, within three (03) weeks from the date of receipt of said order copy;

v) On renewal of the Passport, the petitioner herein shall deposit the original renewed Passport before the trial Court in S.T. No.30327/2014 pending before learned Special Judge (Vyapam); and

vi) However, liberty is granted to the petitioner herein to file an application before the trial Court seeking permission to travel aboard and it is for the trial Court to consider the same in accordance with law.

19. With the aforesaid directions, this petition stands disposed of.

(MILIND RAMESH PHADKE)
JUDGE