

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 07.02.2025
Pronounced on: 11.02.2025**

**WP(C) No. 21/2023
CM No. 92/2023**

Mohd. Amir Malik, age 29 years
S/O Abdul Rahim Malik
R/O Shagan, Tehsil Khari District Ramban.

....Petitioner(s)

Through: Mr. B.S. Bali, Advocate.

Vs

1. Union of India
Through Ministry of External Affairs
New Delhi-110001.
2. Regional Passport Officer,
Gandhi Nagar, Jammu.
3. Union Territory of Jammu & Kashmir through
Principal Secretary to Govt.,
Department of Home Affairs,
Civil Secretariat, Jammu/Srinagar.
4. Additional Director General of Police (CID) J&K
Canal Road, Jammu.
5. Sr. Superintendent of Police,
Ramban, District Ramban.
6. Station House Officer,
Police Station, Ramsoo District Ramban.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI for R-1 & 2.
Mrs. Monika Kohli, Sr. AAG for R-3 to 6.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** The petitioner, through the medium of this petition filed under Article 226 of the Constitution of India, seeks a writ

of mandamus directing the respondent No. 4-Additional Director General of Police, CID, J&K to submit the report along with its recommendations in the case of the petitioner to the respondent No. 2-Regional Passport Officer, Gandhi Nagar, Jammu without any further delay; with a further direction to the respondent No. 2-Regional Passport Officer, Gandhi Nagar, Jammu to take a decision and pass an appropriate order in the case of the petitioner for grant of passport in his favour.

- 02.** The petitioner, a resident of UT of Jammu and Kashmir, being a diploma holder in Engineering with a desire to go abroad in search of good job as a career applied for issuance of a passport through 'on line' process under File No. JM2065603398021 dated 06.09.2021 and thereafter the petitioner was informed to contact in the office of Passport Authority at Udhampur to fill up the application form and for verification of particulars/documents; that the petitioner accordingly approached in the said office where the petitioner's particulars were screened and verified and the petitioner was told that his case would be processed accordingly through concerned quarters of CID/Police and would be finally submitted after getting reports to the office of the respondent No. 2-Regional Passport Officer, Jammu for

taking decision with regard to grant of passport in favour of the petitioner.

- 03.** It is stated in the petition that the petitioner, after waiting for sufficient time, was not informed about the status of his case with regard to grant of passport which constrained the petitioner to again approach in the office of the respondents No. 2 and 4 to verify about his case who told that police verification report submitted by the concerned quarter was not clear, as such, his application is under review in the Regional Passport Office.
- 04.** It is alleged in the petition that despite a lapse of more than a year, the respondent No. 2-Regional Passport Officer has not taken a final decision till date even after reports have been submitted by the concerned quarters; that the petitioner apprehends that the case of the petitioner has been deliberately delayed by the respondents in order to carve out a false ground and reason for denying the passport to the petitioner is that one of the brothers of the petitioner, namely, Late Mohd. Ayaz Malik was killed by the security forces in an encounter in a militancy related incident on 24.04.2011.
- 05.** Lastly, the petitioner submits that the petitioner is fully eligible for grant of passport, as no adverse report has

been submitted by any agency against him which may disentitle the petitioner for grant of passport.

06. Pursuant to notice, objections have been filed by the respondents No. 1 and 2 wherein it is stated that on 17.06.2002, adverse police verification report was received regarding the petitioner with the remarks “Not Cleared” and “may likely to misuse the passport”; that a show cause notice dated 03.08.2022 was issued to the petitioner to furnish explanation for ‘not cleared’ police report; and lastly that the petitioner instead of replying to the show cause notice issued to him, has approached this court, through the medium of the instant petition.

07. Objections on behalf of the respondent No. 4 has also been filed, wherein it is stated that the passport verification report in respect of character and antecedents of the petitioner was got verified through field agencies which revealed that petitioner’s brother namely Mohd. Ayaz Malik @ Abu Musa remained a militant of HM outfit who was killed during an encounter with security forces in the year 2011, besides the father of the petitioner is enlisted as OGW in the records; that since brother of the petitioner was affiliated with HM, a banned terrorist organization and his father is an OGW of terrorists, as such under the given circumstances, the

possibility of the applicant coming under duress, influence or extraneous pressure of anti-Indian Terrorist/separatist/secessionist outfits of elements of hostile foreign agencies has been assessed to be of very high probability; that after consideration of the field report, the case of the petitioner for issuance of passport has been disposed of “not recommended”.

- 08.** Petitioner in response to the objections filed by the respondents filed rejoinder, asserting therein that respondents have not shown/indicated anything adverse against the petitioner, which could debar him to get passport; that killing of his brother-Mohd. Ayaz Malik in an encounter in the year 2011 and that his father has been enlisted as OGW in the records are no ground, to deny issuance of passport to the petitioner, being not sustainable under law; that there is no adverse report against petitioner the remarks in CID verification as ‘not cleared’, ‘may likely to misuse the passport as such not cleared’ and ‘not recommended’ should not have weighed with CID or passport authorities to disqualify the petitioner, as he has constitutional right under Article 21 of Constitution of India, to travel abroad.
- 09.** It has been further asserted in the rejoinder that the petitioner has not received any Show Cause Notice (SCN)

dated 03.08.2022, as claimed to have been issued, that the petitioner has not concealed any fact, regarding which further classification may be required.

10. Heard learned counsel for the parties and perused the record.
11. The argument of the learned counsel for the respondents that because the brother of the petitioner was affiliated with Hizbul Mujahideen outfit who was killed during an encounter with security forces and the father of the petitioner being an OGW of the terrorists, the case of the petitioner for issuance of passport has not been recommended, deserves to be rejected on the ground that merely because the brother of the petitioner was a militant and his father is an OGW of the terrorists, the petitioner cannot be deprived of his fundamental right guaranteed under Article 21 of the Constitution of India.
12. Passports Act, 1967, came to be enacted which as on date, regulates the issuance of passports in the Country. Section 5 of the Passports Act, 1967, envisages filing of an application for issuance of a passport in the prescribed form as also envisages payment of fee and other formalities. Section 5(2) envisages the issuance of the passport by the Passport Authority after making such inquiry, if any, as it may consider necessary, subject to

other provisions of the Act. Section 6(2) of the Act envisages refusal to issue a passport or travel document on any of the grounds mentioned in sub-clauses (a) to (i). For purposes of present controversy, Section 6(2), (b), (c) and (d) are relevant and are reproduced herein:-

“6. Refusal of passport, 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 sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a).....

(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) to (i)”

- 13.** While the protection of personal liberty guaranteed under Article 21 of the Constitution is available to a person, the said right cannot be claimed as a matter of right by a person who is an anarchist or a person attempting to

destabilize the security and integrity of our State. It is precisely for those reasons that the provisions of Section 6(2) sub-sections (a) to (i) have been incorporated in the Passports Act, 1967. In the backdrop of the aforementioned facts and the law, the respondents would certainly be justified in not recommending the case of the petitioner for issuance of passport, had there been any iota of allegation against the petitioner himself or his involvement in any subversive activities which could be deemed to be activities prejudicial to the security, sovereignty and integrity of the State. It should have been the activities of the petitioner which should have formed the basis either for permitting or rejecting the request for issuance of passport in his favour. The basis for not recommending the case of the petitioner for issuance of passport does not have any reasonable relation or nexus with the activities of the petitioner as the same do not even remotely connect the petitioner with any activity which could be termed as prejudicial to the security, sovereignty and integrity of the State or the Country. The non-recommendation of the case of the petitioner is based upon material which can be said to be nothing but in the realm of speculation. The petitioner cannot be deprived of his right as enshrined under Article 21 of the

Constitution on the basis of the alleged misdemeanors of his brother.

14. Law on the subject is no longer res integra. The Apex Court in case titled **“Satwant Singh Sawhney v. D. Ramarathnam”**, AIR 1967 SC 1836, held, inter alia, that the right to travel abroad was a part of person’s personal liberty as enshrined under Article 21 of the Constitution which could not be denied except in accordance with the procedure established by law. It is apt to reproduce para 32 of the said judgment hereunder:

“32. For the reasons mentioned above, we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Article 21 of the Constitution, no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right.”

Same view was taken by the Apex Court in case titled **“Maneka Gandhi Vs. Union of India and Another”**, reported as (1978) 1 SCC 248. This Court also while dealing with an identical case in OWP No. 551/2008 titled **“Sajad Ayoub Bhat Vs. State and ors”** has held that it is not permissible under law that when

‘A’ has committed a crime, ‘B’ should be punished. In the instant case also, the petitioner is sought to be punished for the alleged sins of some other person.

15. The next argument of the learned counsel for the respondents No. 1 and 2 that the present writ petition is not maintainable as the petitioner instead of replying to the show cause notice issued to him has approached this Court also is an argument which requires to be rejected firstly for the reason that in the police verification report, the case of the petitioner has been shown as **‘not recommended’** on twin reasons that petitioner’s brother who was a terrorist had been killed way back in the year 2011 and petitioner’s father has also been classified as OGW. What could be explained by the petitioner in response to SCN, as there was no allegations, whatsoever, against the person of the petitioner, so as to disentitle him from obtaining passport, having regard to the provisions of the Passport Act.

16. Having regard to the aforesaid reasons and discussions made hereinabove, this Court is of the considered opinion that there is no reason to not recommend the case of the petitioner for issuance of passport just for the involvement of his brother in militancy activities in the

year 2011 when he was killed and the listing of his father as an OGW for grant of passport in his favour.

- 17.** For the aforesaid reasons, the instant petition is allowed. The respondent No. 4-Additional Director General of Police, CID is directed to re-submit the report uninfluenced by the conduct or activities of the brother of the petitioner as well as his father to the respondent No. 2-Regional Passport Officer within four weeks who shall consider the case of the petitioner on the report of the respondent No. 4 and pass an appropriate order in favour of the petitioner, within two weeks thereafter.

- 18.** Disposed of, accordingly, along with connected application(s).



सत्यमेव जयते

(M A CHOWDHARY)
JUDGE

JAMMU
11.02.2025
NARESH/SECY

Whether the order is speaking: **Yes/No**
Whether the order is reportable: **Yes/No**

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