

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1836/2024 CM(4964/2024)

MOHAMMAD ABASS LONE

...Petitioner(s)

Through: Mr. Taha Khalil, Advocate.

Vs.

UNION OF INDIA AND ORS

...Respondent(s)

Through: Mr. Faizan Ahmad Ganie CGSC vice

Mr. T. M. Shamsi, DSGI.

Ms. Nadia Abdullah, AC vice

Mr. Mohsin Qadri, Sr. AAG.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

10.02.2025

(ORAL)

1. In the instant petition filed under Article 226 of the Constitution, the petitioner herein has prayed for the following reliefs; -

- A. Writ in the nature of Mandamus or any other appropriate writ declaring the impugned action of the Respondents 2 and 3 in withholding the clearance report (verification) qua the petitioner as not clear only because of pendency of case FIR No. 02/2020 lodged by Respondent No. 5, as well as action of the Respondent No. 4 in withholding the Reissuance of Passport/Travel Document applied for by the petitioner online in the prescribed Format vide keeping the application of the petitioner at the "Review" stage, void ab-initio and non-est in law being violative of Articles 14 and 21 of Constitution of India read with The Passport Act, 1967 and the Rules framed thereunder and the Law declared on the subject by Hon'ble Supreme Court of India and this Hon'ble Court in case titled Rajesh Gupta vs Union India and another (WP(C) No. 1534/2022) decided on 23.11.2022, respectively, be issued in favour of the petitioner and against respondents
- B. Writ in the nature of Certiorari or any other appropriate writ quashing the impugned action of the Respondents 2 and 3 in withholding the clearance report (verification) qua the petitioner as not clear only because of pendency of case FIR No. 02/2020 lodged by Respondent No. 5, as well as action of the Respondent No. 4 in withholding the Reissuance of Passport/Travel Document applied for by the petitioner online in the prescribed Format vide keeping the application of the petitioner at the "Review" stage, void ab-initio and non-est in law being violative of Articles 14 and 21 of Constitution of India read with The Passport Act, 1967 and the Rules framed thereunder and the Law declared on the subject by Hon'ble Supreme Court of India and this Hon'ble Court in case titled Rajesh Gupta vs Union of India and another (WP(C) No. 1534/2022) decided on 23.11.2022, respectively, be issued in favour of the petitioner and against Respondents;
- C. Writ in the nature Mandamus or any other appropriate Writ, directing Respondent No. 04 to grant passport facility to the petitioner in the Re-Issue category in accordance with The Passport Act, 1967 and the Rules framed thereunder and the Law declared on the subject by Hon'ble Supreme Court of India and this Hon'ble Court in case titled Rajesh Gupta

vs Union of India and another (WP(C) No. 1534/2022) decided on 23.11.2022, respectively, be issued in favour of the petitioner and against Respondent No. 04;

2. The facts under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition are that petitioner herein has retired on superannuation from a gazetted engineering post in Jammu Kashmir Projects Construction Corporation, a Public Sector Undertaking and that on 4th February 2020, while the petitioner was in service and working as Dy. General Manager of Unit 10 of Kupwara FIR was registered by respondent 5 against the officials of the said Unit 10 under Sections 468, 471, 120-B, IPC, read with Section 5(2) of the Prevention of Corruption Act and despite undertaking investigation in the said FIR, no charge sheet was laid down before any competent Court of law and that in connection with the investigation of the said FIR, the bank account of the petitioner came to be freezed by the investigating agency, which bank account, however, subsequently came to be defreezed by the competent Court, upon an application filed by the petitioner.
3. It is further stated that the petitioner was holding a passport/travel document issued in his favour bearing number M4633407 and had applied for its renewal before its date of expiry on 26th of December, 2024, before Respondent 4 through online mode in the prescribed format on 28th of May, 2024, however, subsequently discovered online on the official website of the respondent 1 that the case of the petitioner for reissuance of passport/travel document has been halted on account of the registration of FIR No.02/2020, as security clearance/verification has not been accorded for reissuance of the passport in favour of the petitioner by respondent 5, and that the application of the petitioner for reissuance of the passport has been kept pending at “review stage” by respondent 4.
4. The petitioner herein has maintained the instant petition while seeking aforesaid reliefs, on the premise that the action of the respondents 2 to 4 in halting the reissuance of passport/travel document in favour of the petitioner on account of pendency of FIR No. 02/2020, supra, is illegal and unconstitutional, violative of Article 14 of the Constitution.
5. **Reply** to the petition of the respondents though not filed is taken on record at the request of the counsel for the respondents wherein the

petition is being opposed on the premise that the passport/travel document in favour of the petitioner could not be issued on account of the verification report received from the Director General of Police, (CID), owing to the involvement of the petitioner in FIR No. 41/2020 and 02/2020 both registered with Police Station Crime Branch, which FIRs are under investigation and the petitioner accordingly came to be intimated about the reason for non-issuance of passport/travel documents vide letter dated 8th of August, 2024, and that the passport/travel document is issued in favor of a person on the basis of a clear verification report.

6. On joint request of counsel for the parties, the matter is taken up for final consideration and disposal at this stage.

Heard counsel for the parties and perused the record.

7. Counsel for the petitioner while making his submission in line and tune with the case setup in the petition, invited the attention of this court to the judgment passed by the co-ordinate Bench of this Court in WP(C) No. 1534/2022 titled as "*Rajesh Gupta v. Union of India and Anr*" dated 23rd of November, 2022, and would submit that the instant case is covered by the said judgment, wherein it has been held that mere registration of FIR or pendency of investigation by the investigating agency is no ground to refuse the renewal of a passport.
8. The appearing counsel for the respondents do not dispute the passing of the aforesaid judgment by a co-ordinate Bench and law lay down therein.
9. Before proceeding further in the matter, it would be appropriate and advantageous to refer to para 8 to 13 of the judgment supra hereunder: -

8. Indisputably, the right to travel abroad is a facet of personal liberty guaranteed to the citizens of this Country under Article 21 of the Constitution of India. This is so authoritatively held in **Satwant Singh Sawhney v. D.Ramarathnam, AIR 1967 SC 1836** and **Menaka Gandhi v. Union of India and another AIR 1978 SC 597** and, therefore, this right can only be curtailed by imposing restrictions as are authorized by law. The Passport Act is an Act of Parliament that deals with the issue of passports and travel documents to regulate the departure from India of citizens of India and other persons and for the matters incidental or ancillary thereto. Section 5 of the Passport Act deals with applications, to be submitted for obtaining passports, travel documents and other orders thereon. The refusal of the passport or travel documents is dealt with by Section 6 of the Passport Act, which for facility of reference is reproduced hereunder:-

"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 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."

9. Sub Section (1) of Section 6 of the Passport Act clearly provides that application for grant or renewal of passport shall be refused only on the grounds mentioned in the Section and on no other ground. Apart from other grounds, Clause (f) of Sub Section (2) of Section 6 provides that request for grant or renewal of passport or travel documents can be refused, if proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India.

10. Mere registration of an FIR or pendency of investigation by the Investigating Agency is no ground to refuse issue or renewal of passport requested by the applicant. At this stage, when FIR alone is registered and investigation is

undertaken by the Investigating Agency, there are no proceedings before a criminal Court. The criminal proceedings commence before the competent Court of criminal jurisdiction only when a final report is laid by the investigating agency before the Court or in case of a private complaint, when the criminal Court of competent jurisdiction takes cognizance and proceeds in the manner provided under the Code of Criminal Procedure. Till such eventuality happens, we cannot say that there are criminal proceedings pending in the Court. If that be the clear and unequivocal position emerging from the scheme of Code of Criminal Procedure, there is not even an iota of doubt that registration of FIR and the investigation taken thereupon by the investigating agency cannot be said to be the proceedings pending before a criminal Court in India to attract disqualification laid down in Clause (f) of Sub Section (2) of Section 6 of the Passport Act.

11. To the similar effect are the provisions of Section 10 of the Passport Act, which deal with variation, impounding and revocation of passports and travel documents. Under Section 10 of the Passport Act, the passport authority may impound or cause to be impounded or revoke a passport or travel document, if apart from others, it is brought to its notice that the proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel documents are pending before a criminal Court in India. This is so provided in Clause (e) of Sub Section of Section 10. Clause (h) of Sub Section (3) of Section 10 further provides that the passport already issued can be impounded or revoked by the passport authority, if it is brought to its notice that a warrant or summons for the appearance, or a warrant for the arrest of the holder of the passport or travel document has been issued by a Court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such Court.
 12. The issue as to when can the proceedings be said to be pending before the Criminal Court was considered by the Madras High Court in **Venkatesh Kandasamy v. Government of India, Ministry of External Affairs, AIR 2015 Mad 3** and it was held that no proceedings can be said to have been initiated under Clause (a) of Section 190 of the Criminal Procedure Code unless cognizance is taken by the Court for proceeding further in the matter.
 13. In the aforesaid case, Madras High Court found that all criminal complaints as against the applicant were only at the stage of investigation and, therefore, it was not a case of the passport authorities that final reports have been filed in the criminal Court in any of the criminal complaint so as to make the case come within the four corners of Section 6(2)(f) of the Passport Act. Similar order passed by the passport authorities was set aside by the Madras High Court.
10. Having regard to the aforesaid judgment as also the fact of the case, wherein it came to be passed by the Co-ordinate Bench, inasmuch as the facts and issues involved in the instant petition, it is not in dispute that in the case supra, petitioner herein had been declined the issuance of passport on account of his alleged involvement in a criminal case being FIR No.03/2019 wherein no chargesheet had been filed. It is not in dispute that in the instant case as well, the petitioner is alleged to have been involved in the FIRs 41/2020 and 02/2020, and in both the

FIRs the investigation is stated to have not been concluded and no charge sheet laid before the competent court of law.

11. In view of the aforesaid position obtaining in the matter, this court has no reason to take a view different than what has been taken by the Co-ordinate Bench in **Rajesh Gupta's** case, supra, as the instant case is squarely covered by the law laid down by the co-ordinate Bench in the said case.
12. Accordingly, for the aforesaid reasons, the instant petition deserves to be allowed and same accordingly is allowed with a direction to the respondents 1 and 4 to accord consideration to the case of the petitioner for grant of passport/travel document, notwithstanding the alleged involvement of the petitioner in FIR Nos. 41/2020 and 02/2020 and the no clearness granted by respondents 2, 3 and 5 in this regard. However, before according such consideration respondent 4 shall re-verify as to whether a final report/charge sheet has been laid in the FIRs' in question in which the petitioner is alleged to be involved before any competent court of law. Let needful be done within a period of four weeks from the date a copy of this order is produced by the petitioner before respondent 4.
13. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

10.02.2025

Ishaq

Whether the order is speaking? Yes
Whether approved for reporting ? Yes