



2026:AHC:4166-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 9771 of 2025

Poem Jaiswar

.....Petitioner(s)

Versus

Union Of India And Another

.....Respondent(s)

Counsel for Petitioner(s)	: Chandra Mohan Singh, Rajesh Kumar
Counsel for Respondent(s)	: A.S.G.I., Sanjay Dwivedi

A.F.R.

Court No. - 1

HON'BLE AJIT KUMAR, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

(Per: Swarupama Chaturvedi J.)

1. Heard Shri Gaurav Pandey, Advocate holding brief of Shri Rajesh Kumar, learned counsel for the petitioner and Shri Sanjay Dwivedi, learned Standing Counsel for the State-respondents.

2. By means of the present petition filed under Article 226 of the Constitution of India, the petitioner, a minor girl of two years, represented by her mother, seeks issuance of a writ, order or direction in the nature of mandamus commanding respondent no.2 to issue a passport in her favour.

3. Learned counsel for the petitioner submits that since the petitioner is a minor, she applied for issuance of a passport through her mother on 17.01.2025, which was registered on 27.01.2025 and allotted Passport Application No. LK3060650744225. He further submits that the application was filed before the Office of the Regional Passport Officer, Lucknow after completion of all formalities required under the Passport Act, 1967 and the rules framed thereunder and yet no decision is passed on her application.

4. Learned counsel further submits that matrimonial disputes have arisen between the parents of the petitioner leading to the FIR being lodged by the mother against father of the petitioner and his family members, being Case

Crime No. 0042 of 2024, under Sections 498-A, 323, 504, 506, 406 IPC and Sections 3/4 of the Dowry Prohibition Act, at Police Station Mahila Thana, District Jaunpur. Learned counsel for the petitioner further submits that solely due to the pendency of the aforesaid criminal case between her parents, the concerned passport authority has orally declined to proceed with issuance of the passport.

5. Learned counsel representing petitioner further contends that due to the ongoing matrimonial dispute, the father of the petitioner is not cooperating and is unwilling to grant consent for issuance of the passport. The petitioner asserts that such non-cooperation on the part of the father cannot be acceptable reason to violate the rights of a minor child, which is guaranteed under Article 21 of the Constitution of India.

6. Learned counsel further submits that the right to obtain a passport is an integral part of the right to personal liberty guaranteed under Article 21 of the Constitution of India, and the same cannot be curtailed for the minor due to dispute in between parents. He further submits that despite repeated follow up with the office of respondent no.2, no decision has been taken on the passport application, and such continued pendency of the application is in violation of the provisions of the Passport Act, 1967 and against the settled principles of administrative law.

7. Having considered the pleadings on record and the submissions advanced by learned counsel for the petitioner, the principal issue which arises for consideration by this Court is whether the passport application of a minor child can be kept pending merely on account of matrimonial or criminal disputes between her parents.

8. During the pendency of the present petition, this court, by order dated 10.04.2025, after hearing the parties, directed the learned counsel representing respondents to obtain written instructions explaining the reasons for non-issuance of the passport, or otherwise to place instructions regarding issuance of the passport in favour of the petitioner.

9. Pursuant to the order dated 10.04.2025, learned counsel appearing for the respondent authorities, on the basis of written instructions, submits that a letter was sent to the petitioner by the Assistant Passport Officer/Senior

Superintendent on 22.04.2025. A copy of the letter has been placed on record, which states that, for processing the passport application of the petitioner in accordance with law and for completion of the required formalities relating to issuance of the passport, the petitioner is required to appear before the concerned office on working days, between 10:00 a.m. and 1:30 p.m., along with the documents specified in the letter.

10. It is evident from the submissions and the letter placed on record by the counsel representing respondent that the passport authorities have not refused the application outright but have sought certain documents to comply with legal requirements. Learned counsel submits that upon compliance with these requirements, the passport application shall be processed in accordance with law.

11. After considering the submissions made by counsels representing parties and the material on record, we find it appropriate to examine the legal position regarding the issuance of a passport to a minor child where one parent is not cooperating due to matrimonial disputes.

12. Right to obtain a passport and travel abroad is a facet of the fundamental right to personal liberty under Article 21 of the Constitution and cannot be arbitrarily denied on account of parental disagreements. At this stage, we consider it appropriate to peruse relevant statutory provisions and judgements of other Courts on the issue of minor's right in similar facts and circumstances.

13. It is well-settled that the expression "person liberty" in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law and also the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Apex Court has held in **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**, that the right to travel is encompassed within the ambit of the right to life and personal liberty, and that any administrative action impinging upon such right must satisfy the test of fairness, reasonableness and non-arbitrariness. In **Maneka Gandhi (supra)** it was observed by Justice M.H. Beg that:

"193. It seems to me that there can be little doubt that the right to travel and to go

outside the country, which orders regulating issue, suspension or impounding, and cancellation of passports directly affect, must be included in rights to "personal liberty" on the strength of decisions of this Court giving a very wide ambit to the right to personal liberty."

14. The legal principle discussed above has been consistently followed, and recently, in **Mahesh Kumar Agarwal v. Union of India & Another, 2025 SCC OnLine SC 2887**, the Supreme Court observed that:

"2. Liberty, in our constitutional scheme, is not a gift of the State but its first obligation. The freedom of a citizen to move, to travel, to pursue livelihood and opportunity, subject to law, is an essential part of the guarantee under Article 21 of the Constitution of India. The State may, where statute so provides, regulate or restrain that freedom in the interests of justice, security or public order but such restraint must be narrowly confined to what is necessary, proportionate to the object sought to be achieved, and clearly anchored in law. When procedural safeguards are converted into rigid barriers, or temporary disabilities are allowed to harden into indefinite exclusions, the balance between the power of the State and the dignity of the individual is disturbed, and the promise of the Constitution is put at risk.

15. It is a common assumption that the document enabling a citizen to apply for permission to cross border with the permission to leave the country to go to a particular country. It is important to distinguish between the possession of a valid passport and the act of travelling abroad. A passport is a document issued to a citizen by the State, which enables its holder to apply for a visa and, subject to compliance with applicable laws and governmental orders, to cross international borders. The mere issuance of a passport does not itself confer a right to travel abroad in violation of any law, but it is a prerequisite for exercising the right to freedom of movement internationally. In the context of minors, while administrative authorities are required to verify the consent of natural guardians, such verification cannot be used as a tool to indefinitely frustrate the exercise of rights, and procedural compliance should be ensured without unnecessary delay. In **Mahesh Kumar Agarwal (supra)** the Supreme Court observed that:

"22. It is important to keep distinct the possession of a valid passport and the act of travelling abroad. A passport is a civil document that enables its holder to seek a visa and, subject to other laws and orders, to cross international borders..."

16. Section 6 of the Passport Act, 1967 relates to provisions for specific refusal of Passport, travel documents etc., enumerating various conditions for refusal of passport, which are reproduced below:

"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.

(Emphasis added)"

17. Having regard to the above statutory provisions, it is evident that a passport application can be refused only on the specific grounds enumerated in Section 6 of the Act, which include national security concerns, ongoing criminal proceedings, or restrictions imposed by a competent court. The authorities do not have a general or discretionary power to deny a passport on other extraneous or administrative grounds. In the present case of a minor, no such conditions exist that would justify rejection of the application. Parental disputes or pending matrimonial and criminal matters between the natural guardians cannot constitute a valid statutory reason for refusal. Therefore, the passport authorities are duty-bound to process and issue the passport once the prescribed formalities are completed and there is no prohibitory order.

18. The Passport Rules, 1980, and the Passport Manual reinforces this approach by providing mechanisms for issuing passport to minors even in cases of parental discord, ensuring that the minor's rights are not subordinated to disagreements between guardians. As per provisions provided for the minor in the passport rules, in case one of the parents of the minor child has not given consent for issuance of passport, the parent who has applied for passport is required to submit declaration in the form of Annexure (C). Declarant is required to declare that there is an ongoing case between the parents for divorce and custody of minor child is also pending but the competent Court has not issued any prohibitory order for issuance of passport without consent of other parent and also that the child is being exclusively in the physical custody of that parent. There is no prohibition in the Passport Rules that without any consent of the father, passport cannot be issued to minor child. Even there is no provision that in the absence of any prohibitory order, the permission from the Court is required.

19. The statutory declarations under Annexure-C is specifically provides to address the situation where one parent is unavailable or refuses consent without lawful justification and therefore the passport authority cannot sit over an application indefinitely on the basis of unsubstantiated objections or delay formal decision making beyond reasonable bounds, particularly when all required documents and declarations are in place and there is no court order restraining the issuance of the passport.

20. Chapter 4 of the Passport Manual, 2020, lays down the provisions governing the issuance of passports to minors. Clause 4 of the said Chapter specifically addresses special categories of minor applicants and comprehensively provides the procedure to be followed in all such specific cases, including circumstances where matrimonial disputes or divorce proceedings between the parents are pending, as well as cases involving single or separated parents seeking issuance of a passport for the minor child. Delhi High Court in **Smita Maan Vs Regional Passport Officer 2023 SCC OnLine Del 2323** has observed that the Manual's requirements are not rigid obstacles but must be construed flexibly to ensure that a minor's welfare is not held hostage to the mutual acrimony of parents.

21. Delhi High Court in **Smita Maan (supra)** has made following observations after dealing with office memorandum, Passport Manual 2020 and relevant statutory provisions:

"23. In all the three decisions quoted above, the biological father had in effect disowned the child and had severed all ties with the child. Irrespective of the fact that the applicable clauses in the Manual may be different, the spirit behind the said decisions is clear, i.e., that under certain circumstances the name of the biological father can be deleted and the surname can also be changed. Both the Passport Manual and the OM relied upon by the Respondents recognise that passports can be issued under varying circumstances without the name of the father. Such a relief ought to be considered, depending upon the factual position emerging in each case. No hard and fast rule can be applied. There are myriad situations in the case of matrimonial discord between parents, where the child's passport application may have to be considered by the authorities. Such situations include –

- *divorce with sole custody and mere visitation;*
- *divorce with joint custody and visitation;*
- *divorce with sole custody and no visitation;*
- *divorce with complete disowning of the child;*
- *divorce with some rights being given to the child;*
- *divorce between the couple but rights vesting in either side's grandparents;*
- *Separation with divorce pending and visitation issues pending in Court;*
- *Desertion by either parent;*
- *Divorce or Separation with conditions relating to subsequent marriages which may alter the relationship with the child;*
- *Legal disowning of the child by either parent;*
- *Situations where the couple are in different countries and an attempt is made to remove the child from a jurisdiction;*

24. The situations set out above are not exhaustive but are illustrative to show how the passport applications of minors may have to be considered and examined under varying circumstances. The Manual merely contemplates some of the situations and provides for certain mechanisms. However, the need for flexibility exists depending upon the fact situation. A thorough examination and understanding of court orders may also be required."

22. On the issue of passport issuance to the minor where parents had dispute, Bombay High Court observed that a minor's right to travel abroad cannot be prejudiced merely because the father, involved in ongoing matrimonial proceedings, refuses to give his consent or no objection certificate. The absence of consent from one parent in such circumstances cannot nullify the constitutional rights of a minor, and a mechanical refusal to process the application cannot be countenanced.

23. Relevant paragraph in the judgement of Bombay High Court in **Yushika Vivek Gedam vs. Union of India & ors., 2025 SCC OnLine Bom 46**, reads as under :

"23. We may also observe that in the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary needs in dealing with passport applications. The present case is an example of a student being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the Passport Authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the Passport Authority cannot be countenanced.

24. We thus find that such valuable constitutional right of the petitioner cannot be prejudiced much less be taken away, and merely on the ground as contained in the impugned communication dated 18 November, 2024 issued by respondent no. 2. Further Section 6 of the Passport Act, 1967 provides for Refusal of passports, travel documents etc. The ground on which the application of the petitioner is not being processed is in no manner whatsoever recognized by Section 6 of the Passport Act. In the aforesaid circumstances, we find that there is no warrant in law for respondent no. 2 to deny the re-issuance of passport to the petitioner when the declaration in Annexure-C was submitted by the petitioner's mother."

24. Madhya Pradesh High Court has also taken the similar view in **Devyani**

Nitish Bharadwaj and Others Vs Union of India and Others, 2025 SCC OnLine MP 154, and granted relief to petitioners, minor daughters, who had applied for renewal of their passports at the Regional Passport Office, Bhopal, Ministry of External Affairs, through their mother. These judgements highlights the importance of statutory compliance but it also demonstrates that while doing statutory formalities, authorities must not create undue barriers that frustrate the minor's fundamental rights.

25. It appears that the Passport Rules, 1980, have specifically foreseen the situation where the consent of one parent of a minor may not be obtainable due to unavoidable circumstances. In such cases, the Rule provide a complete procedural mechanism to ensure that the minor's right to a passport is not defeated. The prescribed Annexure C is required to be submitted along with the passport application by the applying parent. This annexure is a recognized declaration that takes care of necessary procedural requirements, enabling the passport authorities to process and issue the passport, even in the absence of consent from one parent. Accordingly, where the minor's application is otherwise in order and all formalities under the Rules are complied with, there exists no lawful reason to deny the passport.

26. In view of the foregoing discussion, the respondent authorities are directed to process and issue the passport of the petitioner forthwith, subject to the completion of routine verification formalities, as per the provisions of the Passport Act, 1967, and the Passport Rules, 1980 and applicable government notifications. The passport authorities shall ensure that the passport is issued within a period of four weeks from the date petitioner complies with the procedural requirements through her mother, which is already communicated by the authorities if there is no legal impediment.

27. The writ petition is therefore allowed in terms of the above directions. There shall be no order as to costs.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

January 7, 2026

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