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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-14561-2025 (O&M)
Date of decision :20.05.2025**

Kuldeep Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner.

Ms. Ayushi Sharma, Central Government Counsel
for respondents No.1 to 3.

HARSH BUNGER, J. [ORAL]

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, *inter alia*, is for issuance of a writ in the nature of *mandamus* directing the respondents to issue passport to the petitioner.

2. Briefly, the petitioner is facing trial in FIR No. 89 dated 12.05.2022 registered under Section 15 of NDPS Act at Police Station Baghapurana, District Moga. Owing to the pendency of the case, the petitioner sought permission from the learned Additional Sessions Judge, Moga, to apply for a fresh passport.

2.1 The learned Special Court, Moga vide order dated 19.02.2025 (Annexure P-1) granted permission to the petitioner to apply for fresh passport in view of the circular dated 21.08.2014 issued by Ministry of External Affairs and various judicial pronouncements; with a further

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observation that the application of the petitioner shall be dealt with as per rules.

3. Pursuant to the trial court's permission, the petitioner duly submitted an application for issuance of a passport on 12.03.2025 (Annexure P-3). However, the passport was not granted. Initially, the Passport Office issued a file closure notice on 30.03.2025 (Annexure P-4), followed by a request for clarifications on 29.04.2025 (Annexure P-5) in view of an adverse police verification report. Ultimately, the Regional Passport Office, Chandigarh, vide the impugned communication dated 07.05.2025 (Annexure P-6), directed the petitioner to obtain fresh permission from the trial court explicitly allowing him to "depart from India" in accordance with Notification No. GSR 570(E) dated 25.08.1993.

4. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court, for the relief/s, as noticed here-in-above.

5. Notice of motion.

6. Ms. Ayushi Sharma, Central Government Counsel appears and accepts notice on behalf of respondents No.1 to 3.

7. Learned counsel for the petitioner contends that the impugned communication issued by the respondent authorities is wholly arbitrary and unsustainable in law. It is submitted that the learned trial Court, vide order dated 19.02.2025, has already granted permission to the petitioner to apply for a fresh passport, however the respondent authorities have not issued the passport on the ground that petitioner has not been granted permission to depart from India. He further submits that the petitioner does not intend to

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travel abroad at this stage and only seeks issuance of passport, which is a fundamental right under Article 21 of the Constitution of India and that he is also willing to keep the passport in safe custody with the trial Court or as directed.

8. Learned Central Government Counsel, while opposing the petition, places reliance on Section 6(2)(f) of the Passports Act, 1967, asserting that a passport cannot be issued unless specific permission to travel abroad has been granted. It is submitted that, under Section 6(2)(f), the passport authority is empowered to refuse issuance of a passport or travel document to any person against whom criminal proceedings are pending before a court in India. Further, reference is made to Notification GSR-570(E), which provides an exemption from the operation of Section 6(2)(f) in cases where the individual obtains a court order permitting departure from India. The counsel argues that, in accordance with this notification, the petitioner must first obtain explicit permission from the competent court to leave the country, failing which no passport can be issued. In the present case, it is contended that the court orders (Annexure P-1) merely grant permission to apply for passport, without any express permission to travel abroad or depart from India. Therefore, it is asserted that the passport cannot be issued to the petitioner.

9. Heard.

10. The Hon'ble Apex Court in "*Maneka Gandhi v. 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

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such law contains fair, reasonable and just procedure. Hon'ble the Apex Court made following observations:

"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..."

10.1 In ***Satish Chandra Verma v. Union of India (UOI) and others, 2019 SCC Online (SC) 2048***; the Hon'ble Apex Court observed 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."

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10.2 The Hon'ble Apex Court in *Sumit Mehta v. State of NCT of Delhi, 2013 (15) SCC 570*, 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."

10.3 The Hon'ble Supreme Court in *"Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation", 2020 Crl. L J. (SC) 572*; had an occasion to examine the issue of pendency of criminal cases in the light of the provisions of the Passports Act, 1967. 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, however the sentence was reduced to a period of one (01) year. The petitioner therein approached the Apex Court by way of filing an appeal and the same was pending. In those circumstances, Hon'ble Apex court 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 was not less than two years. It was observed that Section 6(2)(f) of 1967 Act relates to a situation where the applicant is facing trial in a criminal Court. 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 Hon'ble Apex Court directed the Passport Authority to issue the passport of the applicant

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without raising the objection relating to the pendency of the aforesaid criminal appeal in Supreme Court.

10.4 In *Ganni Bhaskara Rao v. Union of India, 2022 AIR (Andhra Pradesh)*; Hon'ble Andhra Pradesh High Court observed as under:-

“5. This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot "hold" or possess a passport. As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years. The use of the conjunction 'and' makes it clear that both the ingredients must be present. Every conviction is not a ground to impound the passport. If this is the situation post-conviction, in the opinion of this Court, the pendency of a case / cases is not a ground to refuse, renewal or to demand the surrender of a passport...”

10.5 In *Narendra K. Ambwani v. Union of India, 2014(35) RCR (Civil) 769*; a Division Bench of Bombay High Court held 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 passports 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

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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 atleast 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.

12. For avoidance of doubt, we clarify that the guidelines set out herein will be applicable only in the cases where the learned Magistrate ordered renewal of the passports as per Passport Rules, 1980 and to no other. In other cases, where the learned Magistrate had granted permission to the accused persons to depart from India, the provisions of Section 6 (2) (f) of the Passports Act, 1967 and the Notification(s) issued thereunder from time to time by the Ministry of External Affairs or such other competent authority so empowered, will continue to apply and directions permitting the accused persons to depart from India and/or the orders permitting renewal of the passports of such accused persons shall continue to be governed by such Notification(s)...”

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11. From the above referred judicial pronouncements, it is apparent that mere pendency of criminal case cannot be the ground to deny passport facilities to an applicant since right to personal liberty not only includes applicant's right to travel abroad, but also applicant's right to possess or hold a passport. Further, keeping in view the observations made by Hon'ble the Apex Court in *Vangala Kasturi Rangacharyulu's case (supra)*, it is clear that if a person convicted of a crime is entitled to seek a passport as held by the Hon'ble Supreme Court of India; this Court does not find any reason to hold that the petitioner who is only an accused in the case mentioned above; cannot hold a passport, especially when the trial Court has permitted him to apply for a new passport.

12. Further, in the instant case, the petitioner has given the following undertaking in para 10 of the writ petition:-

“That it is relevant to mention here that the present FIR in question is pending for adjudication before the learned trial court and the petitioner hereby undertake that in the eventuality, the passport is issued to the petitioner, the same shall remain in custody of Hon'ble Trial Court during the pendency of trial. The petitioner further undertake that in the eventuality of making any program of his travel abroad, the petitioner will be bound to get prior permission from the learned trial court and the petitioner further will be bound to return to India to rejoin his trial.”

13. Taking into consideration the aforesaid facts and circumstances of the case, and having duly considered the law laid down by the Apex Court and other High Courts in the various Judgments (referred to and extracted above), the instant writ petition is disposed of with the following directions :-

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i) The petitioner herein shall submit an undertaking along with an affidavit before the trial Court(s) concerned in the case(s) wherein petitioner is facing trial, stating that he will not leave India during pendency of the said case without permission of the Court and that he will co-operate with trial Court in concluding the proceedings in the said case.

ii) On filing such an undertaking(s) as well as affidavit(s), 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(s) before the Respondent No.3- Regional Passport Office for issuance of his passport;

iv) The Respondent No.3- Regional Passport Office shall consider the application of the petitioner for issuance of passport in the light of the observations made by this Court herein as well as the contents of the undertaking(s) given by the petitioner for issuance of his passport in accordance with law, within three (03) weeks from the date when the petitioner submits certified copies of undertaking(s) in terms of direction nos.(ii) and (iii) above;

v) On preparation of the Passport, the petitioner herein shall deposit the original Passport before the concerned Court, where the trial in FIR No.89, dated 12.05.2022 is pending within a period of 10 days from the date of receipt of passport by the petitioner; and

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

14. All pending applications (if any) shall also stand closed.

May 20, 2025

Himani

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No