

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 3010/2024

Reserved on: 03.03.2025
Pronounced on: 31.05.2025

Sajad Ahmad Khan

.... Petitioner/Appellant(s)

Through:- Mr. Areeb Javed Kawoosa, Advocate

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. Vishal Sharma, DSGI
Ms. Mrinal, Advocate vice
Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. Petitioner has challenged the order dated 11.09.2021, issued by the learned Special Judge Anti-Corruption CBI Cases, Jammu, whereby, the application of the petitioner for release of his passport bearing No. N2274313 has been rejected. Further direction is sought to respondent No. 4 to issue fresh passport in his favour.
2. The petitioner is a senior citizen, an IAS officer, who retired on 31.03.2018. The passport of the petitioner bearing No. N2274313 was seized by the respondents on 12.10.2021. The respondents informed the petitioner that FIR No. RCCHG0512018S0006 was registered regarding issuance of arms licenses by Deputy Commissioners of UT of J&K. The respondents during investigation conducted a search of the petitioner's residence and vide seizure memo dated 12.10.2021 seized his original

passport, two mobile phones and one original gift deed executed between the father-in-law of the petitioner and his wife about 25 years ago.

3. The petitioner was subsequently called to the CBI office at Chandigarh for investigation wherein the petitioner appeared and participated in the investigation and requested for release of passport and other articles.
4. The Regional Passport Officer, Srinagar sent an e-mail to the petitioner, informing him that his passport has been suspended due to Section 10(3)(c) i.e. security threat to India of the Passports Act and he was asked to contact Passport Officer, Srinagar, before 17.12.2021, failing which, action would be taken against him. This was replied by him on 27.01.2022, stating that he has contracted Covid-19 and was hospitalized and therefore could not attend to the e-mail. The petitioner also requested the respondents to inform him with the formalities for restoration of the passport. It is submitted by the petitioner that he was informed by the respondents that he could apply for a fresh case so he applied fresh also.
5. The respondent No. 4, vide communication dated 03.02.2023, informed the petitioner regarding impounding of the passport of the petitioner under Section 10(3)(c) i.e. security threat to India of the Passports Act. There was no show cause notice issued to the petitioner containing any allegations or circumstances which would indicate necessary to impound revoke the passport of the petitioner in the interest of sovereignty and integrity of India or security of India. In fact, the only allegation against the petitioner is with regard to FIR No. RCCHG0512018S0006. The CBI

had also recommended impounding of the Passport under Section 10(3)(e) of the Passports Act.

6. The contention of the petitioner is that he is a senior citizen and is in advanced stage of his life and could not follow up regarding release of his passport and intend to go for pilgrimage, therefore, the petitioner filed an application seeking release of the passport and other articles before the court of Special Judge, Anti-Corruption, CBI cases, who vide order dated 11.09.2024 has released the other articles seized vide seizure memo dated 12.10.2021, but held that the passport cannot be released.
7. The petitioner is aggrieved of the order dated 11.09.2024 on the ground that impugned order is unsustainable in law. The learned trial court did not consider all the pleas raised in the application. The petitioner intends to travel abroad for religious pilgrimage and requires passport to enable him to travel abroad. The right to travel is a fundamental right as per the mandate of Article 21 of the Constitution of India.
8. It is contended that the petitioner is not involved in any offence which is prejudicial to the national interest and security of the country and this is not also discernible from the reply filed by respondent No. 1. The passport of the petitioner, it is submitted is no longer required for investigation as same has been in custody of respondents for more than three years. The petitioner intends to travel to holy pilgrimage Haj/Umrah, as such, requires the passport to fulfill his religious obligations. The right to travel of the petitioner cannot be curtailed in this manner. The petitioner further submits that he does not intend to leave India for any other foreign

country, except for holy pilgrimage which he wants to perform by visiting the holy cities of Mecca and Medina. Thus, petitioner seeks release of the passport or a direction to the respondents to issue fresh passport in his favour.

9. In the objections filed by respondent Nos. 1 to 4, they have opposed the prayer of the petitioner for release of the passport. The respondents submit that the CBI had registered two cases i.e. RC-6(S)2018 (Jammu Division) and RC-7(S)2018 (Kashmir Division) in CBI, SCB, Chandigarh and conducted detailed investigation. During the investigation, the role of the petitioner was found to have been established for conspiracy with gun houses for issuance of Arms License illegally in view of the monetary considerations using false information and forged documents. It is alleged that during the period 2012-16, the Deputy Commissioners of various districts in connivance with respondent have fraudulently and illegally issued gun licenses, flouting all norms and procedures by using their official position as public servants. Their acts constituted commission of offence under Section 5(2) of Prevention of Corruption Act.
10. The respondents further submit that after the completion of investigation, out of 10 districts, in 07 districts incriminating role of licensing authorities including accused and gun house dealers were revealed. During the investigation, the incriminating role of the petitioner, the then DM Poonch, was also established. The respondents have sought sanction for prosecution against serving public servants vide letter dated 30.10.2023, which is awaited and after the receipt of sanction for prosecution from the

competent authority, chargesheet will be filed against the accused petitioner along with the accused person. The respondents submit that in case passport of the petitioner is released, there is reasonable apprehension that the petitioner may abstain from the judicial proceedings, thereby, jeopardizing the larger interest of the case.

11. Heard learned counsel for the parties and perused the file.
12. The right to travel abroad is also being held as one of the rights available to the citizens under Article 21 of the Constitution of India. The Hon'ble Supreme Court in **"Satwant Singh Sawhney v. D. Ramarathnam, report in AIR 1967 SC 1836**, has held that, "as per Article 21 of the Constitution of India, no person can be deprived of his right to travel except according to the procedure established by law". It expanded the scope of freedom to travel and equated the same to a fundamental right and a constitutional protection available to the Citizens of this Country. This expansion of right of freedom has been reiterated with approval in various subsequent judgments. The position of law has not changed even after the promulgation of the Passport Act, 1967.
13. The Hon'ble Supreme Court in **"Maneka Gandhi v. Union of India", (1978) 1 SCC 248**, while interpreting the scope of Article 21, has held that: -

"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.

14. In **“Satish Chandra Verma v. Union of India and others, 2019 SCC Online (SC) 2048”**, the Hon’ble Supreme Court while dealing with the scope of fundamental rights has 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 are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right.”

15. The right to travel abroad is inherent in right to life and liberty guaranteed under Article 21 of the Constitution of India. This right can be curtailed

by the passport officer after arriving at the satisfaction on the basis of available record that the passport cannot be issued to the same is to be impounded.

16. The passport of the petitioner was seized vide seizure memo dated 12.10.2021, pursuant to the investigation being conducted for the conspiracy of the various public authorities who have illegally issued gun licenses by flouting norms for monetary consideration. The application of the petitioner was dismissed for release of the passport was rejected by the Special Judge, Anti-Corruption, CBI Cases Jammu, only on the ground of apprehension that accused may flee from the course of justice thereby jeopardizing the broader interest of the case.

17. Thereafter, the Regional Passport Officer, Srinagar, vide communication dated 03.02.2023, impounded the passport of the petitioner. This communication reads as under: -

“It has been decided to impound the passport bearing Passport No. N2274313, issued on date 17.08.2015 to Shri/Smt./Kumari Sajad Ahmad Khan, S/o, D/o, W/o, C/o Mohmad Amin Khan under 30/Sec 10(3)(c)/Security Threat to India of the Passports Act, 1967.

You are therefore, requested to submit the passport to this passport office with immediate effect, if not already done.”

18. In their reply, the respondent Nos. 2 and 3 i.e. CBI has categorically stated that passport of the petitioner is seized pursuant to investigation in FIR No. 11/2018, registered under Section 5(2) of PC Act, with regard to issuance of gun licenses for monetary considerations and involvement of

gun houses. The passport of the petitioner was already seized by the respondents on 12.10.2021, pursuant to FIR registered by them. The petitioner has placed on record reply filed by ASP, CBI SCB Chandigarh before the Special Judge Anti-Corruption Cases, Jammu, in the application seeking release of passport. In the reply, the respondents have admitted that the passport of the petitioner has been sent to the Regional Passport Officer, Boulevard Road near Nehru Park Srinagar for impounding under Section 10(3)(e) of the Passports Act. Similar stand has also been taken by them before the Special Judge, Anti-Corruption, CBI Cases, Srinagar, when the petitioner has approached the court. That application was held not maintainable due to territorial jurisdiction vide order dated 11.06.2024. Thereafter, the petitioner had approached court at Jammu.

19. During the proceedings in this petition, vide order dated 21.12.2024, the respondents were directed to provide the relevant record/material in sealed cover which weighed with the authorities to impound the passport of the petitioner and the legal impediment in their way for granting passport afresh.
20. On 29.01.2025, the learned counsel for the respondents submitted that they had filed detailed reply on the basis of material available and there is no other record available with the respondents.
21. The Regional Passport Officer (RPO) found it necessary to impound the passport of the petitioner in terms of Section 10(3)(c) of the Act, in the interest of sovereignty, integrity of India and friendly relations of the

country and also directed the petitioner to submit the passport to the passport office. Though the respondent Nos. 2 and 3 had sent the same to respondent No. 4-Regional Passport Office, for impounding under Section 10(3) (e).

22. The issue which arises for consideration is whether the order of the Regional Passport Officer to impound the passport of the petitioner has been validly exercised by him. Though the CBI has categorically submitted that they had sent the passport of the petitioner for impounding under Section 10(3)(e) of the Passports Act. The respondent No. 4, by the impugned order has impounded the passport of the petitioner in terms of Section 10(3)(c) of the Passports Act. Section 10(3) of the Passports Act reads as under: -

“10. Variation, impounding and revocation of passports and travel documents-

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

[Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of

India with any foreign country, or in the interests of the general public;

- (d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, 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;
- (e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

23. Be that as it may, the impounding of the passport of the petitioner is under Section 10(3)(c) of the Passports Act. The passport authority has not placed any material on record to show the necessity of impounding the passport of the petitioner under Section 10(3)(c) of the Act. If the passport of the petitioner is impounded under this Section, the authority must record in writing a brief statement of reasons for passing such an order as per the mandate of Section 10 sub section (5) of the Act, and upon demand, furnish a copy of the same to the holder of the passport or travel document. Admittedly, this requirement has not been complied with by the respondents. This apart, the impugned order has been passed following the principles of natural justice. The respondents have not provided opportunity of hearing to the petitioner. The respondents then issue e-mail to the petitioner that his passport has been suspended for the reason security threat to India.
24. The respondents have failed to place any material on record to indicate that the impounding of the passport of the petitioner was with regard to the security concerns of the Union Territory of J&K and the fact that

impounding of passport was necessary in the interest of security of India. Moreso, when the petitioner is a senior citizen who has retired from Indian Administrative Service and there are no such allegations against him.

25. The power to impound the passport under Section 10 of the Passports Act is a serious restriction on the fundamental rights of the citizen and order of impounding/suspending passport without sufficient cause or without following principles of natural justice is liable to be set aside. Thus, the order of impounding the passport of the petitioner under Section 10(3)(c) has not been validly exercised by him.
26. This apart, the passport of the petitioner has been impounded on the recommendations of respondents Nos. 2 and 3, on the ground of registration of the FIR and the investigation therein which would fall under clause 10(3)(e) i.e. the matters in which criminal case is pending. It is well settled that mere pendency of the investigation would not give power to the authorities to impound the passport under Section 10(3)(e). Since mere registration of the FIR by the investigation agency is also no ground for refusal to issue, renew or impound the passport. It is only upon the filing of a charge sheet and the court taking cognizance of the offence that it may be said that a criminal case is actually pending.
27. 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 proceedings further in the matter”. Similar view has been expressed in “**Manish Kumar Mittal vs. Chief Passport Officer & Anr.**”, in **WP(C) No. 4835/2013**.

28. Mere registration of a criminal case against a person does not amount to proceedings being pending against him before a criminal court. Clause (e) of Section 10(3) applies only if the proceedings in respect to the offence alleged to have been committed are pending before the criminal court where the passport is impounded. The proceedings are pending only if a chargesheet has been filed, which is not the case. As no chargesheet has been filed, therefore, the passport could not have been impounded.
29. Since the passport of the petitioner was impounded under Section 10(3)(c) of the Act, the petitioner has a right to be heard to oppose the ground on which his passport was sought to be impounded. The email/notice asking the petitioner to contact him is issued as a meaningless formality. This is well settled by the Apex Court in *Maneka Gandhi v. Union of India* that principles of natural justice are to be read in any action under Section 10(3) (c) of the Act. For this reason, the action of impounding of passport is liable to be set aside.
30. In view of the aforesaid facts and circumstances, I find merit in the petition and the same is allowed. The impugned order dated 11.09.2021, passed by the learned Special Judge, Anti-Corruption, CBI Cases, Jammu, to the extent of refusal to release passport is set aside. Consequently,

communication dated 03.02.2023, directing impounding of the passport of the petitioner is set aside. The respondent No. 4-Regional Passport Officer, is directed to pass an appropriate order either to release the passport of the petitioner or issue a fresh passport to him after completion of all formalities.

31. Disposed of.

(SINDHU SHARMA)
JUDGE

Jammu
31.05.2025
Vishal Khajuria

Whether the judgment is speaking : Yes
Whether the judgment is reportable : Yes

