

Mohd. Afsar vs Union Of India Thru. Secy. Ministry Of ... on 31 January, 2025

Author: Rajan Roy

Bench: Rajan Roy

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6770-DB

Court No. - 2

Case :- WRIT - C No. - 961 of 2025

Petitioner :- Mohd. Afsar

Respondent :- Union Of India Thru. Secy. Ministry Of External Affairs New Delhi And 2 Ot

Counsel for Petitioner :- Mohd. Nafeesh Quraishi

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the petitioner and Sri S.B. Pandey, learned Senior Advocate & D.S.G.I. assisted by Sri Varun Pandey, learned counsel for the opposite parties.
2. By means of this petition, the petitioner seeks renewal/re-issuance of passport for which an application has been submitted on 08.02.2024 which has not been decided.
3. Learned counsel for the concerned opposite parties submits that admittedly there is one criminal trial against the petitioner as is mentioned in paras no. 7 and 8 of the writ petition bearing FIR No.445/2011 under Sections 498-A, 323, 504, 506 IPC and 3/4 of Dowry Prohibition Act registered

at Police Station Salon, District Raebareli, on account of which, the passport cannot be issued in view of Section 6(2)(f) of the Passport Act, 1967 (in short 'the Act, 1967'). However, he has fairly informed the Court that certain exemptions have been granted in this regard vide Notification bearing GSR 570 (E) dated 25.08.1993 which has been reiterated by a recent Notification dated 10.10.2019. These notifications are statutory in nature and have been issued in exercise of powers conferred by Clause-(a) of Section 22 of the Act, 1967 and are in supersession of earlier Notification dated 14.04.1976. According to the said Notification, if the petitioner gets a No-Objection Certificate/ permission from the court where the criminal cases are pending then a short validity passport can be reissued to the petitioner in terms of the aforesaid Notifications. However, as of now, no such permission has been taken by the petitioner. Learned counsel for the opposite parties has also invited our attention to earlier decisions of this Court such as decision dated 20.11.2018 passed in Writ Petition No.31723 (M/B) of 2018 'Salim Kumar vs. Union of India & Ors.' wherein this aspect as also GSR 570(E) dated 25.08.1993 was taken into consideration as also decision of Delhi High Court and thereafter, direction was issued to the petitioner to move an appropriate application before the court of criminal jurisdiction where the trial was pending against him seeking permission to go abroad. Consequential direction was also issued for consideration of issuance of passport if such permission is granted by the court below. He has also placed before us another Division Bench judgment dated 03.12.2022 rendered in Writ-C No.8621 of 2022 'Shiv Shankar vs. Union of India & Ors.' wherein similar view has been taken after considering the Notification dated 25.08.1993 and 10.10.2019 as also provisions of the Passport Act, 1967. He has also referred to a similar decision dated 21.06.2022 rendered in Writ-C No.3617 of 2022 by Division Bench of this Court in the case of 'Smt. Rashmi Kapoor vs. Union of India & Ors.' wherein also law has been elucidated and directions have been issued accordingly in a case where criminal cases were pending and passport was not being issued. He has also referred to a recent decision dated 21.10.2024 rendered by this very Division Bench in Writ-C No.8874 of 2024 'Shah Alam vs. Union of India & Ors.' on the same subject. However, in the same vein, he has also referred to another judgment dated 25.06.2024 rendered by a Co-ordinate Bench in Writ-C No.5587 of 2024 'Umapati vs. Union of India & Ors.' wherein it has been held that there is no provision in the Passport Act requiring any permission to be taken from the court of criminal jurisdiction where the criminal trial are pending for issuance of a passport and a direction has been issued to the Passport Officer to take a decision on the application of the petitioner. The submission is that this judgment dated 25.06.2024 has been rendered in ignorance of and without considering earlier judgments on the same subject by the Co-ordinate Benches. He has also invited our attention to various judgments of Hon'ble the Supreme Court wherein the law of precedents has been discussed and it has been held that in the event, there being conflicting judgments of Co-ordinate Benches, it is the earlier judgment which should be followed especially in a case where the subsequent Division Bench has not considered the earlier Division Bench judgment. These decisions have been rendered in Civil Appeal No.5707 of 2023 (@Special Leave Petition (Civil) No.18727 of 2023) 'Union Territory of Ladakh and ors. vs. Jammu & Kashmir National Conference and Ors.' dated 06.09.2023; (2017) 16 SCC 680 'National Insurance Company Limited v Pranay Sethi' which in fact is a Constitution Bench judgment on the same issue; 'Chandra Prakash and Ors. vs. State of U.P.' (2002) 4 SCC 234; 'Union of India vs. Raghubir Singh' (1989) 2 SCC 754; 'Pradip Chandra Parija and others v. Pramod Chandra Patnaik' (2002) 1 SCC Page 1; 'Rattiram vs. State of Madhya Pradesh' (2012) 4 SCC 516; 'National Telephone Company Ltd vs Post Master General' 1913 AC546 (HL) and 'Sandeep Kumar Bafna vs. State of

Maharastra' (2014) 6 SCC 623. He has specifically referred to the decision of Hon'ble the Supreme Court in the case of Rattiram (supra) wherein the question of conflict between two judgments rendered by benches of equal strength specifically came up for consideration and a Three Judge Bench of Hon'ble the Supreme Court relying upon Constitution Bench decision in Raghbir Singh (supra) and other decisions on the subject held that earlier decision was a binding precedent and when in ignorance of it, subsequent decision has been rendered, the concept of per incuriam would come into play.

4. In view of the aforesaid, we are of the view that petitioner should seek requisite No-Objection Certificate/ permission from the court of criminal jurisdiction where the aforesaid criminal case is pending trial and if the N.O.C. or permission is granted by the trial court then the Passport Officer shall take a decision on the application of the petitioner dated 08.02.2024 for renewal/re-issuance of passport in the light of the aforesaid Notifications dated 25.08.1993 and 10.10.2019 at the earliest say within three weeks of submission of such N.O.C. / permission. However, if the permission/ N.O.C. is not granted then of course, the matter shall rest as it is with further opportunity to the petitioner to raise grievance before the appropriate forum. While considering the application of the petitioner for grant of No-Objection Certificate/ permission, the court below shall consider his claim in the light of Notifications dated 25.08.1993 and 10.10.2019 and the judgments and the decisions cited hereinabove wherein directions have been issued to seek such permission from the court where the criminal case is pending copy of which shall be provided by the petitioner to the court below.

5. With these observations, the petition is disposed of.

[Brij Raj Singh, J.] [Rajan Roy, J.] Order Date :- 31.1.2025 Santosh/-