

## Minor (X) vs State And Others on 12 March, 2024

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.A. 41/2018  
MINOR (X)

STATE AND OTHERS

Through: Ms. Richa Dhawan,  
Mr. Kanhaiya Singhal, Ms. V  
Ujwal Ghai, Ms. Simran, Mr.  
Mr. Udit Bakshi, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 12.03.2024 CRL.M.A. 5454/2024 (seeking permission for issuance of passport, by R-2 and 3)

1. This is an application under Section 482 Cr.P.C. preferred on behalf of Respondent No.2 Pramod Kumar Malik and Respondent No.3 Poonam Malik seeking permission/No Objection from this Court for issuance of fresh passports for a period of 10 years.

2. It is stated in the application that Respondents No.2 and 3/Applicants were falsely implicated in case FIR No.321/2012 registered at PS: Sagarpur and after a lengthy trial were acquitted from charges under Section 506 IPC, Section 4 of Protection of Children from Sexual Offences Act, 2012 and Section 23 of Juvenile Justice Act, 2015 in SC No.2/2/13 titled 'State v. Pramod Kumar Malik & Anr.', by learned Special Judge (POCSO), South This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2024 at 21:32:21 West District, Dwarka Courts, Delhi vide judgment dated 30.03.2017. This appeal has been preferred by the Prosecutrix.

3. It is the case of the Applicants that during the pendency of this appeal, they had applied for issuance of passports vide applications bearing Nos. DL1069176299624 and DL10691766224 but the passport authorities raised an objection and have sought copy of the judgment of the Trial Court. Applicants have been visiting the passport office but are informed that due to the pendency of the

present appeal, passports cannot be issued till permission/No Objection is granted by this Court, which compelled the Applicants to file the present application.

4. Learned counsel for the Applicants urges that this Court is within its power under Section 482 Cr.P.C. to issue a direction to the passport authorities to issue passports to the Applicants, subject however, to all other provisions of the Passports Act, 1967 ('Passports Act') being complied with. It is submitted that the Supreme Court in *Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation*, CRL. A. 1342/2017, decided on 27.09.2021, after examining the provisions of Section 6 of the Passports Act observed that conviction of the Appellant stands still till the disposal of the criminal appeal and therefore the passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal. Directions were thereafter issued by the Supreme Court to renew the passport of the Appellant without raising objection relating to the pendency of the criminal appeal, subject to other conditions being fulfilled. Reliance is also placed on the judgment of the Co-ordinate Bench of this Court in *Ashutosh Sharma v. State Thr. CBI*, 2024 SCC OnLine Del 820, where the Court observed that Appellant's appeal against conviction was pending in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2024 at 21:32:21 the Court and consequently, it cannot be held that case of the Appellant was covered by Clause (f) of Section 6(2) of the Passports Act, by virtue of which the passport authority shall refuse to issue a passport where proceedings in respect of an offence alleged to have been committed by the Applicant are pending before a criminal court in India. It was observed that this Court has the power to grant exemption or no objection for the purpose of issuance/renewal of passport to the Appellant, whose criminal appeal is pending before the Court. Reliance in this context is also placed on orders of this Court in *Deepak Jain v. Union of India and Anr.*, W.P.(C) 10680/2018, decided on 08.10.2018 and *Mukesh Ahuja v. The State (NCT of Delhi)*, in CRL.M.A. 20944/2021 in CRL.A. 1179/2018, decided on 22.02.2022.

5. Learned counsel for the Appellant candidly states that he has no objection to the application being allowed.

6. Grounds for refusal of grant of passport are contained in Section 6(2) of the Passports Act and one of the grounds on which the passport authority shall refuse issuance of a passport is that proceedings in respect of an offence alleged to have been committed by the Applicant are pending before a criminal court in India. The Supreme Court in *Vangala Kasturi* (supra), has observed that it is not open to a passport authority to refuse renewal of the passport merely on the ground that a criminal appeal of the Applicant against his conviction is pending. In *Ashutosh Sharma* (supra), this Court held as follows:-

"9. This Court, in case of *Sabir v. State (NCT of Delhi)*, 2023 SCC OnLine Del 4116, had examined the law of Section 6(e)(f) of Passports Act and had observed as under:

"11. A perusal of this notification reveals its circumscribed ambit, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2024 at 21:32:21 which pertains exclusively to the exemption of individuals from the operation of Clause (f) of Section 6(2) of the Passports Act. The said notification lucidly elucidates its sole purpose of granting exemption to citizens who are the subject of pending criminal proceedings. As per the said notification, the Courts before whom the criminal proceedings are pending are empowered to grant permission to travel abroad, subject to certain conditions.

12. During the course of arguments, learned counsel for the appellant had argued that a period of 5 years post conviction, as mentioned under clause (e) of Section 6(2) of Passports Act had elapsed, and no permission of this Court was required for issuance of passport. Having thoughtfully examined the provisions of the Act and relevant notification, this Court is unable to agree with the contentions raised by the learned counsel for the appellant.

13. With regard to this argument, this Court notes that clause (e) and

(f) of Section 6(2) of the Passport Act are exclusive of each other. It can be observed that clause (e) of Section 6(2) pertains to cases in which the applicant have completed 05 years from the date of conviction, and, on the other hand, clause (f) of Section 6(2) pertains to cases which are pending before the court for trial. This essentially reveals that clause (e) deals with situations where no appeal from conviction is pending, as in cases where an appeal would be pending, the provision of clause (f) would come into play, since it is settled law that an appeal would amount to continuance of criminal proceedings.

In this regard, a reference can be made to the decision of Hon'ble Apex Court in Akhtari Bi v. State of M.P., (2001) 4 SCC 355, wherein it has been held as under:

"5. ...Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction..."

14. In the present case, the appellant's appeal against his conviction is pending before this Court since the year 2010. Consequently, it can be held that the case of the applicant is covered by clause (f) of Section 6(2) of the Passports Act, 1967, as the appeal of the applicant against the conviction recorded by learned Trial Court is pending before this Court. Thus, the appellant's situation falls within the purview of the aforesaid notification, conferring upon this Court, the requisite authority to exercise discretion and grant exemption."

10. Therefore, this Court has the power to grant exemption or no objection for the purpose of issuance/renewal of passport to the appellant herein, whose criminal appeal is pending before this Court.

11. In the present case, this Court notes that the instant appeal has been This is a digitally signed order.

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12. Thus, considering the overall facts and circumstances of the case, there are no grounds to refuse the relief as prayed for in this application. It is, therefore, directed that the passport of the appellant herein be renewed by the concerned passport office, as per applicable rules."

7. The same view has been taken by this Court in Mukesh Ahuja (supra) and Pradeep Rath v. Central Bureau of Investigation, CRL.M.A. 2937/2023 in CRL.A. 760/2016 decided on 10.04.2023. Counsel for the Applicants rightly contends that the Supreme Court and this Court have been granting permission for issuance/renewal of passport even where the Applicants were convicted and appeals were pending while the case of the Applicants here is on a better footing as they have been acquitted by the Trial Court after a full-fledged trial. Therefore, this Court sees no impediment in granting the relief prayed for in the present application. Passport authority is directed to process the applications of the Applicants for issuance of passports without taking into consideration that the present appeal is pending. Issuance of passport would, however, be subject to all other conditions being fulfilled in consonance with the provisions of the Passports Act. It is made clear that this order will not be construed as a direction to issue the passports and is only restricted to holding that the pendency of this appeal will not come in the way of issuance of the passports, if the Applicants fulfil all other conditions.

8. Application is disposed of with the aforesaid directions.

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9. List on 20.05.2024.

JYOTI SINGH, J MARCH 12, 2024/kks This is a digitally signed order.

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