

# Udit Rathi vs Central Bureau Of Investigation on 26 August, 2022

**Author: Anu Malhotra**

**Bench: Anu Malhotra**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CRL.A. 764/2016 & CRL.M.A. 13950/2022  
UDIT RATHI

Through: Mr. Tanmaya Mehta & Mr. Vas  
Vats, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

Through: Ms. Tarannum Cheema, SPP fo  
with Mr. Akash Singh, Advoc

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA  
ORDER

% 26.08.2022 CRL.M.A. 13950/2022 in CRL.A. 764/2016 The appellant/applicant, vide CRL.M.A. 13950/2022 seeks directions for necessary permission and No-Objection for renewal of the appellant's passport as per Rules for a period of 10 years from the date of expiry of his passport subject of course to the applicant being otherwise eligible for the same with it having been submitted by the appellant that the CRL.A.764/16 filed by the appellant against his conviction vide judgment dated 26.07.2016 and order dated 27.07.2016 having been admitted and the sentence having been suspended vide order dated 22.08.2016 with it inter alia having been directed that the appellant could not leave the country without prior intimation to the Trial Court with further conditions imposed in relation to Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the travels vide order dated 04.06.2015.

The appellant has since been travelling during the pendency of the trial and during pendency of the appeal as also observed vide order dated 22.03.2021 in CRL.M.A.177/2021 with it having been directed vide order dated 22.03.2021 in CRL.M.A.177/2021 vide paragraph 5 thereof to the effect:-

"5. Since the appellant has filed details showing that the appellant has been travelling during pendency of the trial as also the pendency of the present appeal, application is disposed of permitting the appellant to apply for a fresh passport which will be granted in accordance with law by the competent authority.", as a consequence of which the appellant has been issued a passport bearing no. V3584799 with a validity

of one year i.e. from 10.11.2021 to 09.11.2022.

The applicant/appellant has further submitted to the effect that the applicant has been co-operating in the judicial process, he is not a flight risk has roots in the country that he has travelled abroad w.e.f. March 2015 till 01.06.2022 with the travel details detailed in paragraph 10 of the application to the effect:-

TRAVEL DATE		DESTINATION
17.06.2015	25.06.2015	THAILAND
10.08.2015	17.08.2015	THAILAND
20.10.2015	25.10.2015	AFRICA/UAE
16.01.2016	21.01.2016	UAE
10.01.2017	17.01.2017	SINGAPORE
27.09.2017	03.10.2017	HONGKONG
15.02.2018	21.02.2018	THAILAND
23.07.2018	02.08.2018	EUROPE
15.02.2019	20.02.2019	THAILAND
01.11.2019	11.11.2019	EUROPE
31.12.2019	02.01.2020	THAILAND

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24.02.2022	03.03.2022	UAE
17.05.2022	01.06.2022	EUROPE

submitting to the effect that on each and every time, the applicant has returned back to India.

The appellant thus submits that by way of this application, he seeks the issuance of the passport for a period of 10 years for which ordinary period, a passport would have been issued to an ordinary person and that the applicant needs to travel abroad regularly for both personal and business purposes.

The applicant places reliance on the office memorandum dated 10.10.2019 issued by the Government of India, Ministry of External Affairs, PSP Division which relates to the issuance of a passport to the applicant against whom the criminal cases are pending before the Court of law in India which notification vide paragraph 3 thereof reads to the effect:-

"3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6(2) of the Passports Act, 1967. Section 6(2)(f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceeding in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570(E) dated 25.8.1993 was introduced to give relief -to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity or for the period specified by the Court.", Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

with it having been submitted thus on behalf of the applicant/appellant that it is not mandatory that to a person against whom criminal cases are pending only a short term validity passport with validity of one year can only be issued and it is submitted on behalf of the applicant that the matter is left to the discretion of the Court that a passport even for a period of 10 years can be issued by the authorities.

The status report submitted in response by the CBI reiterates the observations in the order dated 22.03.2021 in CRL.M.A.177/2021 in relation to the aspect of the application having been filed by the applicant for a fresh passport to be granted in accordance with law by the Competent Authority. It is also submitted on behalf of the CBI that passports to those against whom criminal proceedings are pending are ordinarily be allowed to be issued for a period of one year validity with it having thus been submitted on behalf of the CBI that in compliance of the office memorandum dated 10.10.2019, the passport of the appellant may be renewed in accordance with rules.

Rule 12 of the Passport Rules, 1980 reads as under:- "12. Duration of passports or travel documents.--[(1) An ordinary passport for persons other than children below the age of 15 years, containing thirty-six pages or sixty pages shall be in force for a period of 10 years [\* \* \*], from the date of its issue.

(1-A) An ordinary passport for a child below the age of 15 years, containing thirty-six pages shall be in force for a period of 5 years from the date of its issue or until the child attains the age of 15 years, whichever is earlier.] (2) [\* \* \*] (3) [\* \* \*] (4) An emergency certificate shall continue in force for a Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

period of [six months] from the date of its issue. (5) A certificate of identity shall continue in force for a period of [ten] years from the date of its issue.] (6) A diplomatic and an official passport shall continue in force for a period to be decided

in each case by the Central Government or the passport authority which issues the passport:

Provided that the total life of a diplomatic or an official passport shall be ten years from the date of its issue. (7) [ \* \* \* ]."

Section 6 of the Passports Act, 1967 reads as under:-

"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 on 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 Signature Not Verified Digitally Signed By:SUMIT GHAI  
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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."

Apparently, thus, the appellant does not fall in the category of a person entitled to an 'ordinary passport' in terms of the Passport Rules, 1980 in Rule 12(1) thereof qua which, however, the office memorandum dated 10.10.2019 vide notification VI/401/1/5/2019 issued by the Government of India, Ministry of External Affairs makes an exception in public interest exempting citizens of India against whom proceedings in respect of an offence alleged to have been committed by them qua whom proceedings are pending before a criminal Court in India and who produce Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the orders of the Court concerned permitting them to depart from India from the operation of Clause (f) sub section (2) of the said Section 6 of the said Act subject to the conditions as detailed in the said memorandum which indicates that through clause 2 sub Section (a)(1), the passport can be issued to every such citizen of the country against whom there are criminal proceedings pending in criminal Court in India for the periods specified in the order of the Court or if the Court specifies a period for which the passport has to be issued and in terms of Clause 2 to paragraph 2 thereof if no period either for the issuance of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period on one year with it further prescribed through Clause 2(a)(3) that if such order gives permission to travel abroad for a period less than one year but does not specify the period validity of the passport, the passport shall be issued for one year and it being stipulated vide Clause 4(2) that if such order gives permission to travel abroad for a period exceeding one year and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order, making it apparent thus, that there can be permission granted for issuance of passport beyond a period of a year in terms of the said notification itself.

The office memorandum dated 10.10.2019 issued vide notification VI/401/1/5/2019 by the Government of India, Ministry of External Affairs is as under:-

"OFFICE MEMORANDUM Subject: Issue of passports to applicants against whom criminal cases are pending before a court of law in India.

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Reference is invited to Notification No. GSR 570(E) dated 25.8.1993 regarding issuance of passports to applicant who have criminal proceedings pending against them and whose applications would attract the provisions of clause (f) of sub- section (2) of Section 6 of the Passports Act, 1967.

2. GSR 570(E) dated 25 .8.1993 is reproduced below for reference:

GSR 570(E) - In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in super session of the notification of the Government of India in the Ministry of External Affairs No. GSR 298(E) dated the 14th April 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (I) of subsection (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issued-

(i) for the period specified in order of the court referred, to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year;

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

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(b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in 'writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6(2) of the Passports Act, 1967. Section 6(2)(f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant on the ground that proceeding in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India. GSR 570(E) dated 25.8.1993 was introduced to give relief -to such applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity or for the period specified by the Court.

4. It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6(2)(f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble High Court of Delhi in W.P. (CRL) No. 2844/2018 /CRL.M.A 48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.

5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(i) The provisions of GSR 570(E) may be strictly applied in all cases. GSR 570(E) is a statutory notification and hence forms part of the Rules. it is to be noted that as per Section 5(2) of the Passports Act, 1967, the passport authority shall by order in writing take a decision whether to issue or refuse a passport, after making such

inquiry, if any, as it may consider necessary.

Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued -for a shorter period than the prescribed period if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that undertaking as per GSR 570(E) should be complete in all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a note clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre-Police Verification (PV) mode.

"Pre-PV" would be mandatory in all cases of applications submitted with GSR 570(E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

(PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be moved to "post-PV" mode or "No-PV" mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967.

967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10(3)

(b) of the Passports Act, 1967, after following the due procedure.

(v) In case where the first Police Verification(PV) is 'Adverse', secondary police verification may be generated. While a secondary PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating



secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the 'police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court(s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted, by the applicant and complaints or other court orders, if any, that may have been received against the applicant.

(x) It may be noted that GSR 570(E) only exempts an applicant from the operation of Section 6(2)(f) and none of the other sub-sections of Section 6(2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of section 6(2)(f) of the Passports Act, 1967.

6. The above instructions may be noted for strict compliance with immediate effect."

In reply to a specific Court query, the learned SPP for the CBI submits that the appellant/applicant has not misused the liberty of permissions granted to him to travel abroad.

Taking into account the repeated travels of the appellant as indicated Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

vide paragraph 10 of the application under consideration and the status of law as reflected through the office memorandum dated 10.10.2019 vide notification VI/401/1/5/2019 issued as an exemption to Section 6(2)(f) of the Passports Act, 1967, the appellant in the instant case is granted permission for renewal of his passport as per Rules for a period of three years from the date of expiry of his passport subject to his being eligible for the same.

CRL.M.A. 13950/2022 is disposed of.

ANU MALHOTRA, J AUGUST 26, 2022 nc Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.