

[Passport May Be Refused After Filing Of Closure Report By Police, Pending Acceptance By Magistrate: Karnataka HC](#)

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

M. NAGAPRASANNA; J.

WRIT PETITION No.20850 OF 2022; 16 November, 2022

KAJAL NARESH KUMAR *versus* UNION OF INDIA

Petitioner: Adv. Mohan B.K.

Respondents: Adv. Shanthi Bhushan H. (DSG), Adv. M. Vinod Kumar, (AGA)

ORDER

The petitioner is before this Court calling in question communication dated 27-09-2022 issued by the 1st respondent/ Regional Passport Officer, Bangalore and has sought a consequential direction by issuance of a writ in the nature of mandamus directing the 1st respondent to renew/re-issue the passport to the petitioner.

2. Heard Sri B.K. Mohan, learned counsel appearing for the petitioner, Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondents 1 and 2 and Sri M.Vinod Kumar, learned Additional Government Advocate for respondent No.3.

3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner is in possession of an Indian Passport bearing No.V2615889. The petitioner becomes involved in a criminal case in Crime No.16 of 2021 registered for offences punishable under Sections 403, 406, 417, 120B, 380 r/w 34 of the IPC. In the said case, the Police after investigation have filed a 'B' report and the 'B' report is pending consideration at the hands of the learned Magistrate. The 1st respondent in terms of his communication dated 27-09-2022 directs surrender of passport within 21 days from receipt of the said communication. It is this communication that drives the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would submit that the very act of the 1st respondent directing the petitioner to surrender the passport is contrary to law. The direction to surrender is on the basis of pendency of FIR in Crime No.16 of 2021 and police after investigation have filed a 'B' report. Surrendering of passport can be made only when the petitioner is held guilty for furnishing any false information in terms of Section 12(1)(b) of the Passports Act,1967 ('the Act' for short) which is not applicable to the facts of the case at hand. He would seek quashing of the said communication.

5. On the other hand, the Deputy Solicitor General of India representing respondents 1 and 2 would contend that the remedy for the petitioner is before the concerned Court before whom the crime is pending adjudication. He would submit that admittedly, the passport of the petitioner has expired and on its expiry it has to be re-issued. For re-issue in terms of Section 6 of the Act he should be free of crime. Filing of 'B' report does not make the petitioner free of crime as 'B' report could be accepted or rejected by the learned Magistrate. He would seek to place reliance upon several office memoranda issued by the 1st respondent/Union of India from time to time concerning issuance of passport to its citizens. He would further contend that the

petitioner be directed to approach the concerned Court seeking travel permission, in case it is warranted.

6. In reply, the learned counsel for the petitioner would seek to place reliance on the judgment rendered by a co-ordinate Bench wherein a direction was issued for issuance of passport despite pendency of crime in **Writ Petition No.19203 of 2021 [Smt. Kasturi Rajupeta v. Union of India and others – decided on 17th March 2022]** to which the learned Deputy Solicitor General joining issue would submit that the said judgment rendered by the co-ordinate Bench is stayed by the Division Bench in Writ Appeal No.392 of 2022 and the matter is pending consideration. He would submit that the petitioner has to approach the concerned Court for any relief.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

8. The afore-narrated facts are not in dispute. The petitioner was in possession of a passport which had expired at the relevant point in time. The petitioner seeks re-issuance of his passport on its expiry. On the basis of the documents submitted, the respondent-Regional Passport Officer reissues the passport in favour of the petitioner. Later when the police verification is done as a routine in every case, it comes to the knowledge of the respondents that the petitioner is involved in a criminal case in Crime No.16 of 2021. Noticing the fact that the petitioner had suppressed the factum of pendency of a criminal case against him and had secured the passport by misrepresentation, issued a notice directing him to surrender the passport. The involvement of the petitioner as an accused in Crime No.16 of 2021 is not in dispute. 'B' report is yet to be considered by the learned Magistrate. Therefore, the 'B' report being filed will not absolve the petitioner of the crime. Section 6 of the Act reads as follows:

“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 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.”

(Emphasis supplied)

Section 6 deals with refusal of passport and travel documents etc. Section 6(2)(f) mandates that if proceedings are pending in respect of an offence alleged to have been committed by the applicant before a criminal Court in India, the passport authority would have the right to refuse issue of passport or travel documents for visiting any foreign country. Therefore, issuance of passport or re-issuance of passport is subject to Section 6(2)(f) of the Act.

9. It is an admitted fact in the case at hand that a crime in Crime No.16 of 2021 is pending against the petitioner. The Police having filed a 'B' report in the matter would not mean that proceedings against the petitioner have culminated in her acquittal. The rigour of Section 6(2)(f) of the Act gets evaporated only when the applicant who is facing criminal proceedings or a FIR is acquitted, discharged or the proceeding against the said applicant is quashed by a competent Court of law, in exercise of its powers under Section 482 of the Cr.P.C. None of these circumstances exist in the case at hand. All that has happened is, the Police have filed a 'B' report. Mere filing of 'B' report would not mean that the petitioner becomes allegation free *qua* Section 6(2)(f) of the Act. The contention of the learned counsel appearing for the petitioner that a wrong provision is invoked to direct surrender of passport is also unacceptable. The communication dated 21-10-2021 reads as follows:

“To

Dated: Oct 21, 2021

*Kajal Naresh Kumar,
D/o Naresh Kumar, No.191, 3rd Stage,
9th Cross, Gokulam, Mysuru City
Karnataka, India, Pincode 570 002.*

Subject: Clarification required regarding issuance of Passport facilities to Shri/Smt/Kumari/Master KAJAL NARES KUMAR.

Dear Applicant.

This is in reference to receipt of an adverse Police Verification report corresponding to your application for Passport Relssue, with file No. BNM073564334521, dated 09-09-2021. You may recall that a passport bearing passport number V2615889 dated 09-09-

2021 was dispatched to you by this office on the basis of your application dated 8-09-2021.

Police report adverse remarks as: "Frequently checking the applicant criminal background in station documents a case registered against her in v.v. puram police station cr.No.16/2021 u/s 403, 406, 417, 120B, 380 r/w 34 IPC in this case submitted B report but honourable court is not accepted still"

You are therefore, called upon to provide a suitable explanation and submit a fresh application with correct details. Please note that you are required to furnish a proper explanation regarding the circumstances under which you had suppressed the material information in your passport application and obtained the above said passport.

This show cause notice is issued to you due to the reason mentioned below:-

Also state why action should not be taken to impound the passport number V2615889 dated 09-09-2021 under Section _____ of the Passports Act, 1967 and Section 12(1)(b) of the Passports Act, 1967 should not be initiated against you. Please quote the reference number mentioned in the top block of this letter for further correspondence."

The communication is in the nature of show cause notice issued under Section 12(1)(b) of the Act. Section 12(1)(b) of the Act reads as follows:

"12. Offences and penalties.—(1) Whoever—

....

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document."

Section 12 deals with offences and penalties. Section 12(1)(b) of the Act makes any person who knowingly furnishes false information or suppresses any material with a view to obtain a passport or travel documents open for punishment under Section 12. It is an admitted fact that the petitioner applied for re-issuance of passport in the teeth of pendency of the criminal case in Crime No.16 of 2021. The passport authorities issued the passport on the statement made by the applicant/petitioner herein. After the dispatch of the passport, when routine police verification took place, it is then the passport authorities come to know that the petitioner had suppressed the fact of pendency of the crime in Crime No.16 of 2021, the result of which was the impugned communication seeking surrender of passport which has been obtained by suppression of pendency of criminal case. This would become directly attributable to the petitioner as clause 7 of the application which deals with 'other details' mandates such divulgence. Clause 7 of the application reads as follows:

"7.1. Provide the following details if there are any criminal proceedings, warrant pending against you and attach NOC from the court to depart from India."

In terms of the afore-quoted clause 7.1, the applicant is supposed to divulge details of any criminal proceedings, warrant pending against the applicant and also is required to attach a no objection certificate from the Court to depart from India. This obligation is admittedly not fulfilled by the petitioner.

10. The submission of the learned counsel for the petitioner that since the police had filed the 'B' report, the petitioner being a novice who does not know the consequence of law has not furnished the same. But, that very clause mandates seeking of NOC from the concerned Court to depart from India. Therefore, no fault

can be found with the 1st respondent issuing notice under Section 12(1)(b) of the Act, directing surrender of passport which had admittedly been obtained by suppressing involvement in crime and further directing submission of fresh application divulging all details.

11. It is for the petitioner to submit a fresh application before the authorities and also approach the concerned Court where proceedings in Crime No.16 of 2021 are pending consideration seeking any direction to travel abroad, as the application itself requires an NOC from the Court to depart from India. Therefore, without quashing the impugned communication which is in consonance with law, I deem it appropriate to direct the petitioner to approach the concerned Court for redressal of the grievance. This Court would not lend its discretionary jurisdiction under Article 226 of the Constitution of India to the petitioner who admittedly had suppressed the fact of pendency of crime before the passport authorities.

12. With the aforesaid observations, finding no merit to entertain the petition for the prayer that is sought, the petition stands disposed.

Ordered accordingly.

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