

HIGH COURT OF GUJARAT**Bench: Justice Pranav Trivedi****Date of Decision: 24th May 2024**

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 9695 of 2023

GHANSHYAMBHAI SHANKARBHAI PATEL ...APPLICANT**VERSUS****STATE OF GUJARAT & ORS. ...RESPONDENTS****Legislation:**

Sections 279, 337 of the Indian Penal Code (IPC)

Sections 177, 184, 134(B) of the Motor Vehicle Act

Section 6(2)(f) of the Passports Act, 1967

Right to Information Act, 2005

Subject: Special criminal application seeking direction for the reissuance/renewal of the petitioner's passport, held up due to an untraceable case record from a 2007 criminal case.

Headnotes:

Passport Law – Renewal of Passport – Special Criminal Application seeking renewal of passport – Applicant's passport renewal denied by passport authority due to pending criminal case and untraceable court records – Court held that the pendency of a criminal complaint which culminated into a criminal case does not justify refusal of passport renewal under Section 6(2)(f) of the Passports Act, 1967 – Direction issued to passport authority to process renewal application within a month. [Paras 1-9]

Untraceable Court Records – Impact on Administrative Decisions – Analysis – Held – Applicant’s criminal case records untraceable despite multiple efforts – Court found that such administrative lapses should not impede the renewal process – Authorities directed to base their decision on available documents rather than pending criminal case. [Para 5-9]

Decision – Renewal of Passport Directed – Court directed the passport authority to renew the petitioner’s passport within one month – Emphasized that mere registration of an FIR, which culminated into a criminal case, cannot be grounds for denial of passport renewal – Authorities instructed to consider documents provided by the petitioner. [Para 9]

Referred Cases:

- Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi (1967) 3 SCR 525
- Maneka Gandhi v. Union of India (1978) 1 SCC 248
- Suresh Nanda v. CBI (2008) 3 SCC 674
- Om Prakash Gupta v. Union of India (2019) SCC OnLine SC 919
- Rajesh Dubey v. Passport Officer & Ors. (2016) SCC OnLine All 1696

Representing Advocates:

Mr. Suraj B. Matieda for the Applicant

Ms. Shital J. Desai for the Applicant

Mr. Utkarsh Sharma, Additional Public Prosecutor, for Respondent No. 1

Mr. Kashitij Amin for Respondent Nos. 2, 3

ORAL ORDER

1. RULE. Learned Additional Public

Prosecutor Mr. Utkarsh Sharma and learned Central Government Standing Counsel Mr. Kashitij Amin waives service of notice of rule on behalf of respective respondents. Rule is fixed forthwith.

2. By way of this petition, the petitioner has prayed to direct respondent No.2 and 3 authority to consider the application for reissuance/renewal of passport of the petitioner being Application Reference No.22-0003061642 dated 02.03.2022.

3. Learned advocate for the petitioner submitted that on 03.12.2007, the complain being CR No.I-503 of 2007 came to be registered with Naroda Police Station, Ahmedabad and after the conclusion of investigation Criminal Case No.111 of 2008 was culminated out from the impugned FIR. It is submitted the petitioner had applied for reissuance/renewal of his passport Number K4232534, for which the passport authority is insisting for No Objection Certificate from the police or acquittal order in connection with the aforesaid FIR. It is further submitted that the said case came to be disposed of on 18.02.2008, and for getting the certified copy of the said judgment, the petitioner has approached the learned Chief Metropolitan Magistrate Court No.18, Ahmedabad, but his all efforts was in vein, as the record was not traced out. Once again, the petitioner received the information applied through through RTI, informing that the record is yet to be traced out. It is submitted that on request of the petitioner for No Objection, the police inspector, Naroda Police Station, Ahmedabad on 25.06.2023, has given certificate dated 25.06.2023 to the effect that the Case No.0111 of 2008 is pending before the Court and the entire case papers were sent by them to the concerned trial Court.

3.1 Learned advocate for the petitioner further submitted that the respondent authority is insisting for an order of acquittal with regards to the aforesaid case or No Objection Certificate from the respondent no.4, for which they kept the application for reissuance/renewal of the passport on hold due to the aforesaid case. It is further submitted that the petitioner has been running from pillar to post to get the records of the aforesaid Criminal Case No.0111 of 2008 and No Objection Certificate from the police, but the petitioner is unable to get any of the above as the records of the case are untraceable in

the learned trial Court. It is also submitted that the petitioner needs reissuance/renewal of his passport for further Visa procedure to travel United Kingdom, but is unable to get his passport reissued/renewed.

4 . Heard learned advocates on both the sides and perused the papers on record. On 09.02.2024, this Court in paragraph nos.4 and 5 in the present petition passed the following order:

“4. Considering the aforesaid fact, it appears that no proper reply, till date, is given. It appears that neither learned Magistrate has given reply in proper manner nor any efforts is shown to trace out the record and whatever the reasons assigned for the non providing the proper answer for the record in accordance with law and it is the duty of the Court to preserve the record, as per the mandatory provisions of the manual.

5 . In this regard, learned Court of 18th Additional Chief Metropolitan Magistrate is directed to trace out the record preferably within a period of two weeks and inform about the same to the present petitioner. Let copy of the Annexure-B be sent to the learned Registrar General, Gujarat High Court to do the needful and to ensure about the maintenance of the record and to maintain the record as per the provisions of the Civil and Criminal Manual.”

5 . In compliance of the order dated 09.02.2024, the learned Additional Chief Metropolitan Magistrate, Court No. - 18, Ahmedabad, has sent a progress report regarding Criminal Case No.111 of 2018 by communication dated 22.02.2024, wherein it has been stated that the court staffs of its court were searching for the said case, and during the efforts, as per the written progress report of Asst./Superintendent, the staff members have traced out the Criminal Case Register, Fine Register and Rojmel of year 2008, wherein the Criminal Case No.111 of 2008 is shown as disposed as “Plead Guilty”, and all the staff members are searching this case by checking all the disposed cases of the year 2008.

6 . It appears that the main ground cited by respondent No.2 - authority for non-renewal of the Passport of the petitioner is the filing of a criminal complaint being CR No.I-503 of 2007 with Naroda Police Station, Ahmedabad for offences punishable under Sections 279 and 337 of IPC and Sections 177, 184 and 134(B) of the Motor Vehicle Act, and after conclusion of the investigation, the FIR was culminated into Criminal Case No.0111 of 2008.

7. On a query put by the Court, learned Central Government Standing Counsel stated that the respondent-authority has refused to renew the Passport of the petitioner only on account of the registration of the FIR in question, which culminated into a criminal case; however, submitted that since the records are not traceable, the case of the petitioner be considered for five years.

8. It is a well settled that the Passport authority could not refuse renewal of the Passport of a person on the ground of filing of a criminal complaint against such person, which culminated into a Criminal Case. The filing of a criminal complaint might be a relevant issue for issuance of a New Passport; however, the provisions of Section 6(2)(f) of the Passports Act, 1967 would not be applicable to cases where renewal of Passport is sought. Thus, in my opinion, the respondent-authority was not justified in rejecting the application of the petitioner for renewal of Passport on the ground of registration of an FIR against him.

9. In view of the aforesaid, the respondent-authority is directed to consider the Application of the petitioner being Application Reference No.22-0003061642 dated 02.03.2022 for renewal of Passport for Five Years, on the basis of the documents furnished by the petitioner and not to reject the same on the ground of filing of an FIR, which culminated into a Criminal Case against him. Such exercise to be completed within a period of One Month from the date of receipt of writ of this order. With the above direction, the petition stands disposed of. Rule is made absolute to the above extent.

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