

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.20169 OF 2023

*An application under Articles 226 & 227 of
the Constitution of India.*

Madhusmita Samant

: Petitioner

-Versus-

Union of India & anr.

: Opposite Parties

For Petitioner

: M/s.J.Pal, L.Dash, S.R.Pradhan
& C.Mohapatra

For O.Ps.

: Mr.P.K.Parhi, DSGI
Mr.D.R.Bhokta, CGC

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 10.08.2023

1. This Writ Petition is at the instance of the Petitioner on the following prayer :-

“It is, therefore, most humbly prayed that considering the above facts and circumstances your Lordship may be pleased to issue Rule NISI calling upon the Opp.Parties, as to why a writ in the nature of Certiorari shall not be issued to quash the letter dated 14.06.2023 under Annexure-5 issued by Opposite Party No.2 and further, as to why a writ in the nature of Mandamus shall not be issued directing the Opposite Party No.2 to grant renewal of the Passport of the petitioner pending vide renewal application No.BH1075144695923 bearing ARN No.23-1002613901...”

2. Factual background appears to be the Petitioner is already in grant of Passport No.H3734383. The period of Passport remains to be from 24.3.2009 to 23.3.2019. Finding the Passport going to expire and as required under law, the Petitioner, a woman in her sincere attempt in applying for renewal of Passport in due time and appears to be still struggling in the matter of renewal of her Passport.

3. This Writ Petition appears to be in second round of litigation. In the first round of litigation on the Petitioner moving the Writ Petition bearing W.P.(C) No.14051/2022 for expediting the renewal aspect, vide order dated 16.5.2023 this Court after providing opportunity to the Counsel for the Petitioner as well as the Regional Passport Authority finally came to observe as follows :-

“1. Heard learned counsel for the parties. ★

2. In course of submission it has been brought through the communication dated 6.5.2023, the Petitioner has been called upon by the Regional Passport Authority, Bhubaneswar with documents desired under previous communication. Mr.Parhi, learned Deputy Solicitor General of India however submits, for there is communication to the Petitioner, nothing prevents the Petitioner to appear before the Competent Authority on or before 5.6.2023 with required documents as per instruction on 7.3.2023.

3. Mr.Pal, learned counsel for the Petitioner submits that for there is further scope for satisfaction of the Petitioner's case, he does not want to proceed with the Writ Petition presently and undertakes the Petitioner will now attend the Office of the Regional Passport Authority, Bhubaneswar with desired documents by the given date. This Court permits the same and observes, on the Petitioner attending the Office of the Regional Passport Authority, the Passport Authority is directed to take a lawful disposal on the application of the Petitioner while also

keeping in view the judgment of this Court in W.P.(C) No.4834 of 2022.

4. With this observation, the Writ Petition stands disposed of.”

It appears, pursuant to the aforesaid direction, the case of the Petitioner for renewal of Passport got decided by an order of rejection dated 14.6.2023 appearing at Annexure-5. Hence the Writ Petition.

4. Mr.J.Pal, learned counsel for the Petitioner, the renewal applicant herein submits rejection of the renewal application herein boils down the development through two criminal cases and an outcome in WA No.1663/2023 decided by this Court on 13.4.2023. Taking this Court to the development through both the criminal cases, Mr.Pal, learned counsel for the Petitioner submitted, the Petitioner herein so far it relates to G.R. Case No.1343 of 2021 arising out of Jagatsinghpur P.S. Case No.620 of 2021 involving alleged offences against the Petitioner under Sections 379/323/427/506 of the I.P.C., the Petitioner is already on bail being granted by the J.M.F.C., Jagatsinghpur, vide its order dated 15.11.2021 and so far as the second criminal case is found to be obstructing the consideration of renewal aspect involving G.R. No.770/2022 arising out of P.S. Case No.108/2022 involving the offences under Sections 454/294/380 read with Section 34 of the I.P.C. Here the Petitioner is granted bail on the provision at Section 41A of Cr.P.C. Further learned counsel for the Petitioner brings to the notice of the Court that charge sheet/cognizance order dated 2.8.2022 involving G.R. Case

No.770/2022 is challenged in High Court in CRLMC No.1875/2023. The High Court by its order dated 19.5.2023 by way of interim direction has granted stay of further proceeding in G.R. Case No.770/2022, which is claimed to be continuing as of now. It is in the above background, Mr.Pal, learned counsel for the Petitioner contended, there was in fact no lawful obstruction and even the order of the Division Bench cannot be found to be obstructing the Petitioner while keeping the renewal of her Passport. Mr.Pal also alleged, there has been an order mechanical and unwarranted.

5. Mr.P.K.Parhi, learned Deputy Solicitor General of India appearing for the Regional Passport Officer while not disputing that the Petitioner is already on bail in one of the criminal cases referred to herein above and also enlarged on bail under the provision of Section 41A of the Cr.P.C. so far as it relates to the second criminal case. However, banking on the judgment and observation of this Court in disposal of Writ Appeal No.1663/2022 disposed of on 13.4.2023, Mr.Parhi contended, the judgment in W.P.(C) No.4834/2022 does not have precedent and consequently has no application to the case at hand. There is, however, no dispute at Bar that the criminal proceedings are an outcome of trivial issues.

6. Considering the rival contentions of the Parties, this Court finds obstruction so far as it relates to consideration of the renewal

application of the Petitioner, which appears to be pendency of two cases even assuming the judgment in W.P.(C) No.4834/2022 is not a precedent but the only consideration arises here as to mere pendency of two criminal cases against the Petitioner and even after grant of bail in both the cases, if the right of the Petitioner's visiting overseas for any of the purposes can be curtailed ? and if the Passport Authority is justified in asking for an order from the trial court to grant renewal of the Passport application ?

7. Here considering the aspect as indicated herein above, this Court finds, undisputedly the Petitioner is already in entitlement of the Passport. Question here involved renewal of existing Passport pending long since. This Court since finds major obstruction in consideration of renewal of Passport and asking the Petitioner to provide court order, this Court here finds, the Petitioner involved in G.R. Case No.1343/2021 for the alleged offences under Sections 379/323/427/506 of I.P.C., however the Petitioner is already on bail by order of the trial court dated 15.11.2021, which reads as follows :-

“Accused person, Smt.Madhusmita Samanta (40) D/o.Tapas Samanta of Mahanadi Vihar, Plot No.1580, Cuttack A/p.W/o.Rajesh Singh of vill-Hariharpur, Bada Bazar, P.S./dist-Jagatsinghpur is produced in custody through the escort party of J.S.pur P.S. after being arrested by the I.O. and forwarded to this court in connection with J.S.pur P.SD.Case No.620/21 along with forwarding report U/s.379/427/323/506 IPC. She complains of no ill treatment by the police while in police custody. Perused the forwarding report, C.Ds, U/s.161 Crpc statement of witnesses, Check list, Arrest Memo, injury report

Covid-19 report and other connected papers. I.O. has prayed to remand the accused person for a period of 15 days.

Advocate Sri Pitambar Panda and his associates files a V.Nama on behalf of accd. Person and also filed bail petition to release her on bail. Copy Served on LD. App. Who put her objection. The V.nama is accepted. Heard on the bail petition from both side. The Ld. Advocate for the accd.person on his petition has mentioned that, the accd.person has been falsely implicated in this case with this he prayed to take lenient view, and prayed to release the accd. Person on bail. On perusal of case record it is seen that the accd. Alleged to have committed offence U/s.379/427/323/506 IPC. Out of which offences U/s.379/506 IPC are non-bailable in nature and which offences are triable by this court and offences are punishable for a maximum period of three years imprisonment. Further the accused is a lady. Hence keeping in view fact and circumstances, nature and gravity of offence, prescribed punishment for the alleged offence. I am inclined to enlarge the accd.person on bail. Accordingly the bail petition is allowed. Let the accd. be released on bail on furnishing of bail bond of Rs.20,000/- with one solvent surety for the like amount with following condition that :-

- i) She shall not commit any offences while in bail.
- ii) She shall not tamper the prosecution evidence
- iii) She shall not threaten the prosecution witnesses. Put up when bail bond is filed.”सत्यमेव जयते

8. Similarly so far as the second case, i.e., G.R. Case No.770/2022 registered on the File of the J.M.F.C.-I, Cuttack, the Petitioner is not only enlarged on bail on application of Section 41A of Cr.P.C. but on the challenge of the Petitioner to the order taking cognizance in CRLMC No.1875/2023, in issuing notice as an outcome in I.A. No.1639/2023, this Court passed the following order :-

“In the interim, it is directed that further proceeding in G.R. Case No.770/2022 pending in the court of learned S.D.J.M.(S), Cuttack shall remain stayed till the next date.”

On verification it is found, above order is still continuing. Reading the aforesaid and the protection the Petitioner is in enjoyment in both the criminal cases, this Court nowhere finds, there is any obstruction imposed by all these three courts herein, i.e., two courts on the ground of bail and this Court in staying the further proceeding in one of the G.R.Cases and no Court here imposed any condition restricting the Petitioner's visiting right to overseas. It is in this view of the matter, this Court finds, there is no justification in asking the Petitioner herein for providing an order from the competent court of law authorizing her visiting right overseas.

9. To add to this, this Court here finds the following decisions also come to the rescue of the Petitioner.

“A) Looking to the direction of the Hon'ble apex Court in the case of *Vangala Kasturi Rangacharyulu Vs. Central Bureau of Investigation*, (I.A.No.52346/ 2021 involving CrI.A.No.1343/2017 decided on 27.09.2021, this Court finds here the case involves conviction of the party involved therein under Sections 120-B, 420, 468, 471, 477 A of the Indian Penal Code read with section 13(2) and 13(1) of the Prevention of Corruption Act, 1988. This Court reading the aforesaid judgment of the Hon'ble Apex Court finds there has been permission for renewal of passport even after a party is convicted and his challenge to such conviction is pending consideration vide Criminal Appeal No.1343 of 2017 but in consideration of I.A.No.52346 of 2021 involving CrI. Appeal No.1343 of 2017.

B) In the case of *Navin Kumar Sonkar Vs. Union of India & Ors.*, I.L.R. (2018) M.P.677, this Court here finds the decision involves charges under Sections 498-A & 406 of I.P.C. vis-à-vis a refusal of the passport. The High Court involved relying on a decision in the case of *Union of India and Ors. Vs. Charanjit Kaur*, AIR 1987 (SC) 1057, considering the request for renewal of the passport directed the competent authority to issue passport within two weeks but however upon furnishing an undertaking in terms of Clause 6 (2) (d) taken note hereinabove.

C) Similarly, in the case of *Krishna Chiranjeevi Rao Palukuri Venkata Vs. Union of India Ministry of External Affairs, represented by its Principal Secretary and Others*. 2020 SCC Online Kar 3437, the

Karnataka High Court in similar situation involving a criminal case pending against the applicant therein under Section 120B read with Section 420, 419, 467, 468 and 471 of I.P.C. again taking into consideration the provision in the Passports Act, 1967 and the Government Circular has come to allow the claim of the Petitioner. This decision has also taken into account the decision in *Ashok Khanna Vs. Central Bureau of Investigation*, (2019) 265 DLT 614 allowing the application with direction to the Passport Authority.

D) In the case of *Hardik Shah Vs. Union of India and Another*, 2021 SCC Online MP.2326. Going through the decision, this Court finds this is also a similar case of refusal of grant of passport again involving a criminal case against the petitioner therein involving F.I.R. alleging demand of dowry etc. and there has been allowing of renewal of passport.

E) In the case of *Durydhan Sahoo Vs. Republic of India*, (2011) 50 OCR -587 disposed of by this Court involving offence under Sections 7.13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and there has been direction for grant of passport.

F) In the case of *Ballav Kr @ Sriballav Kar Vs. Govt. of India and another*, (2019) 75 OCR-747, this Court also gave permission for availing the passport.”

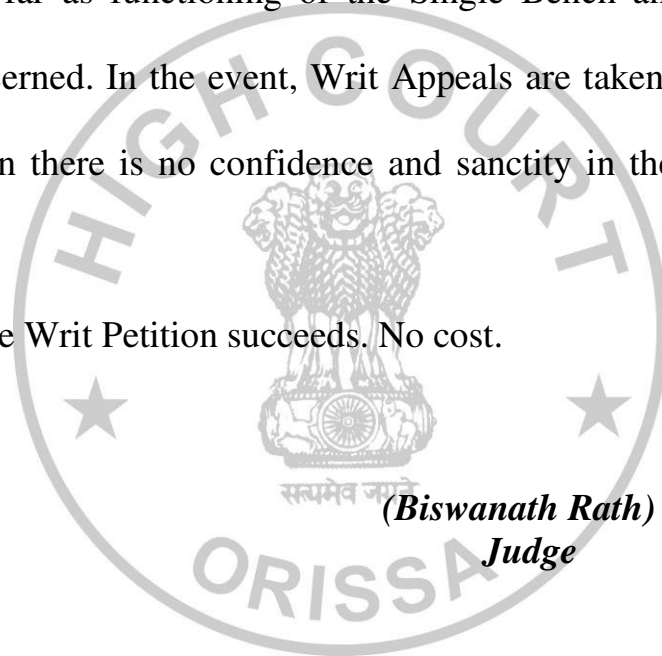
10. Even though the Passport Authority is relaying on a Division Bench order in creating the judgment of this Court in W.P.(C) No.4834/2022, unfortunately the order in creating such proceeding by virtue of such judgment does not give any reasoning as to why such judgment shall not be precedent. The Writ Appeal judgment with great humiliation and respect, this Court observes, it is absolutely unreasoned and unwarranted and appearing to be in abuse of process of law and in spite of the Single Bench judgment passed taking care of so many Hon’ble apex Court judgments indicating herein above allowing parties involved in grave criminal cases having there visiting overseas, the Division Bench appears to have completely ignored all such judgments, which have been passed by the Hon’ble apex Court even.

11. For the Hon'ble apex Court judgments indicated herein above applying to the case of the Petitioner and the reasons assigned on the aspect of illegality on the part of the Regional Passport Authority in asking for a court clearance, there has been illegal application of the provision at Section 6(2)(f) of the Passports Act, 1967. This Court, therefore, interfering in the direction part at Paragraphs-4 & 5 of the impugned order at Annexure-5 granting the Petitioner 30 days time from the date of receipt of that order producing before the Passport Issuing Authority an order from the concerned court allowing to go abroad and setting aside that part directs the Regional Passport Officer, O.P.2 for there is no hindrance in the foreign visit of the Petitioner to grant the renewal of the Passport without further involvement of the Petitioner and remits the renewal Passport of the Petitioner by completing all such exercise within seven days from the date of submission of this judgment.

12. Before parting with the case, it is observed, this Court in its entire practice period of 28 years and judgeship of 9 years has never come across in taking out the effect of such judgments in just three lines order by a higher Bench. There may not be any misunderstanding that the Division Bench has no jurisdiction, however, the Division Bench in such matter is required to apply its mind and give reason in taking out effect of such judgments otherwise such judgments will not be applicable in the legal parlance. It is also clarified here that for the Bench system in High

Court and the practice followed in the roster or assignment for the administrative side decision of the Hon'ble Chief Justice, certain matters are taken up at Single Bench side and certain matters are taken up at Division Bench side. It is strange to observe here, there is perhaps a feeling in the Division Bench that they are having the absolute appellate authority over Single Bench judgment. Yes, there is no doubt, Writ Appeals lie in certain cases but only in letters patent otherwise there is no difference so far as functioning of the Single Bench and the Division Bench is concerned. In the event, Writ Appeals are taken up as a matter of routine then there is no confidence and sanctity in the Single Bench functioning.

13. The Writ Petition succeeds. No cost.



Orissa High Court, Cuttack.
The 10th August, 2023/M.K.Rout, A.R.-cum-Sr.Secy.