

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

WRIT PETITION No.33241 of 2023

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India for the following relief:

“...to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of Respondents specifically Respondent No.3 and Respondent No.4 in not returning the Passport of the petitioner herein bearing No:P2952946 valid upto 22.06.2027 to the petitioner herein as contrary to Article 19 and 21 of the Constitution of India and pass such other order or orders...” (In verbatim)

2. Heard the learned counsel for the petitioner, the learned Assistant Government Pleader for Home appearing for respondent No.2 and learned Special Public Prosecutor for CB-CID appearing for respondents No.3 and 4.

3. The case of the petitioner is that the petitioner is the resident of Virginia State, USA and a Non-Resident Indian and on a personal visit to Hyderabad, Telangana State, he came to meet his ailing mother. He is working as a software engineer by profession and he is also a member of mainstream opposition party in the State of Andhra Pradesh i.e., Telugu Desam Party (T.D.P) and he is also a vocal critic of administrative policies of the incumbent State Government.

(a) The petitioner through his social media platforms i.e., iThink Yash on Twitter, Facebook, Instagram and You Tube, posted several videos by critically analyzing and at times, criticizing both the ruling party and the incumbent State Government. So, several cases were registered against him in the State of Andhra Pradesh due to his political activity of posting videos on social media networks.

(b) On 22.12.2023, when he arrived at the Shamshabad International Airport at Hyderabad, he was detained by the immigration authorities by informing him that a Look Out Circular (LOC) is pending against him and therefore they need to handover the petitioner to the Andhra Pradesh State Police, in relation to the crimes registered against him.

(c) On 23.12.2023, a team of CB-CID Police Officers took up the petitioner from the Shamshabad Police Station and took him to CID Regional Office, Guntur, Andhra Pradesh, in execution of LOC, in relation to a crime registered against him and on the same day, the respondent No.4 issued two notices under Section 41-A of the Code of Criminal Procedure,1973 (for short "Cr.P.C.") and thereafter released him. The respondents No. 3 and 4 did not return the passport of the petitioner even after repeated persuasions and upon request, it was

mentioned to the Advocate of the petitioner, by respondents No.3 and 4 that the passport of the petitioner would be released in a day or two.

(d) Thereafter, the petitioner applied for visa stamping and the date is scheduled as 26.12.2023. If this date is defaulted, then the petitioner has to apply for seeking another date and the slots for visa stamping for the next three months are unavailable. Thereby, the petitioner would be deprived of travelling abroad and consequential discharge of his official obligations. The passport has been seized in contravention of the existing laws in operation and such an exercise is unwarranted and is in violation of Articles 19 and 21 of the Constitution of India.

4. The learned Senior Counsel representing the learned counsel for the petitioner submitted that without following due procedure under law *vide* Sections 91 and 102 of Cr.P.C, the passport has been illegally seized and has not been returned so far. He further submitted that a case in Crime No.2 of 2023, dated 20.02.2023, of Cyber Crimes Police Station, CID2, was registered under Sections 153A, 505(2), 120B of the Indian Penal Code,1860 (for short "I.P.C."), but none of these provisions is attracted, since many times it was held that mere criticism of the policies of a Government would not amount to commission of any

offence under these sections and that the petitioner has made all his statements in the public interest to awaken.

5. The learned Senior Counsel further submitted that the respondent No.1 is made as a formal party since it was not known with whom the passport was held up. He further submitted that the respondent No.2 is also made as a formal party since he is the overall in-charge of the investigation in the State of Andhra Pradesh, as per the Police Standing Orders.

6. The learned Special Public Prosecutor for CB-CID appearing for the respondents No.3 and 4 submitted that the petitioner is involved not only in this case i.e., in crime No.2 of 2023, dated 20.02.2023, of Cyber Crimes Police Station, CID2, but also in some other cases, for example, in Crime No.10 of 2022, dated 05.08.2022, of Cyber Crimes Police Station, CID Andhra Pradesh, Mangalagiri, was registered under Sections 153A, 505(2), 120B of I.P.C, and Section 66-C of Information Technology Act, 2000, and he has been repeatedly making statements provoking the public and infusing distrust to the citizens in the State of Andhra Pradesh against the current Government. She further submitted that in-spite of service of notices under Section 41-A of Cr.P.C. in two other crimes, immediately after releasing him from the

Shamshabad air-port, on the next day also, he held a meeting with media and repeated the same statements and has been continuing the same attitude and repeating the commission of the offence of the same nature. She further submitted that due procedure would be followed in due course, but due to intervening holidays i.e., on 24.12.2023 and 25.12.2023, necessary steps could not be taken. She further requested to impose any conditions against the petitioner not to repeat the commission of offence by taking advantage of service of notices under Section 41-A of Cr.P.C.

7. The learned Senior Counsel, in reply, submitted that in case of violation of notices under Section 41-A of Cr.P.C, the remedy is otherwise, but not by imposing the conditions requested. He further submitted that in the present case the passport was seized without following due procedure under law, under Sections 91 and 102 of Cr.P.C.

8. Sections 91 and 102 of Cr.P.C. read as follows:

Section 91:Summons to produce document or other thing:

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in

whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

Section 102:Power of police officer to seize certain property:

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person

entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

9. As can be understood from the submissions on both sides, the seizure of the passport is not authorized nor was the procedure contemplated under Sections 91 and 102 of Cr.P.C. followed. Therefore, the continuation of holding the passport with respondents No. 3 and 4 is not legally sustainable.

10. The fact that the petitioner has applied for renewal of the visa stamping and a date being allotted today is not in dispute. Therefore, the passport is very much required to the petitioner and without following due procedure of law, his fundamental right to hold his passport cannot be curtailed.

11. If at all, there is any violation of notices issued to the petitioner, the remedy is open to the respondents under appropriate provisions of law. As such, for the time being, no need for imposing any condition against the petitioner while allowing this petition and directing to release the passport of the petitioner under due acknowledgment.

12. Accordingly, the Writ Petition is allowed. The respondents No.3 and 4 are directed to return the passport, forthwith, to the petitioner under due acknowledgment, if not required in any other case to hold it by following due procedure of law. No order as to costs.

13. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

26th December, 2023

B.S.BHANUMATHI, J

Note: Issue C.C. by 26.12.2023
b/o
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HON'BLE Ms. JUSTICE B.S.BHANUMATHI

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