

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No.17014/2026
CNR: RJHC010737122026 | URN: CW / 29769U / 2026

Riddham Deora S/o Mukesh Deora, Aged About 17 Years, Minor
Through His Natural Guardian His Mother Anita Deora W/o
Mukesh Deora, Aged About 41 Years, R/o 3-E-48, New Housing
Board, Pali, District Pali.

----Petitioner

Versus



The Union Of India, Through Joint Secretary (PSP) And
CPO, CPV Division, Ministry Of External Affairs, New
Delhi.

Regional Passport Officer, J-14, Jhalana Institutional,
Area, Jhalana Dungari, Jaipur, Rajasthan.

3. Passport Seva Kendra, Jodhpur, Through Regional
Passport Officer, Sun Tower, Old National Building, Pal
Road, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Rahul Soni
For Respondent(s)	:	Mr. Navneet Singh Birkh

JUSTICE ANOOP KUMAR DHAND

Order

18/08/2026

Reportable

Children are not property of their parents; rather they are
independent individuals under the law. Parents are guardians and
not owners.

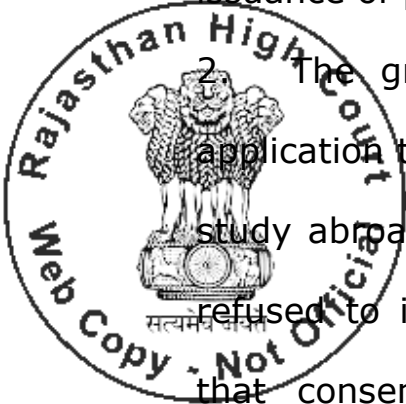
"Whether a minor's right to personal liberty, education and
travelling abroad under Article 21 and 21A of the Constitution of
India can be denied merely because one parent withholds passport

consent?" It is in this background that the issue involved in the instant petition is required to be decided.

1. The minor petitioner, through his natural guardian-mother, has knocked the doors of this Court seeking issuance of appropriate directions to the respondent-passport authority for issuance of passport to him.

2. The grievance of the petitioner is that he submitted an application through his mother for issuance of passport in order to study abroad. However, the respondent-passport authorities have refused to issue passport to the petitioner on a technical count that consent of the petitioner's father is missing from the aforesaid application; and on this technical count alone, the respondent-passport authorities have refused to issue passport to the petitioner.

3. Learned counsel appearing on behalf of the petitioner submits that marriage of the parents of the petitioner was solemnized on 21.02.2002 and from their wedlock, the petitioner was born on 07.05.2009. Counsel submits that on account of matrimonial dispute, both parents of the petitioner started residing separately and thereafter, the petitioner's father submitted an application under Section 9 of the Hindu Marriage Act, 1955 (for short, the Act of 1955') seeking restitution of conjugal rights; whereas the mother of the petitioner submitted an application under Section 13 of the Act of 1955 for dissolution of marriage. Counsel submits that the learned Family Court, Pali, vide judgment dated 09.06.2022 rejected the application under Section 9 of the Act of 1955, submitted by the husband i.e. father of the petitioner, while the divorce petition submitted by the wife



i.e. the petitioner's mother has been allowed and their marriage came to be dissolved. Counsel submits that till date no application has been submitted by the petitioner's father, i.e. divorced husband, seeking custody of the petitioner or visitation rights to meet the petitioner. Counsel submits that the petitioner has passed his secondary school examination in the year 2024 and now he wants to study abroad for a better future. Therefore, an application was submitted by the petitioner, through his mother, before the passport authority for issuance of passport in order to travel abroad for his studies. However, the respondent-passport authorities have refused to issue passport to the petitioner for want of consent of his father. Counsel submits that since marriage of the petitioner's parents has been dissolved and the father is not interested in the domestic affairs of the petitioner, therefore, under these circumstances, it is not possible for the petitioner to obtain consent/signatures of his father and submit the same along with his passport application. Hence, on this technical count alone, the petitioner cannot be deprived of the opportunity and right to go abroad for the purpose of studies. Therefore, interference of this Court is warranted.

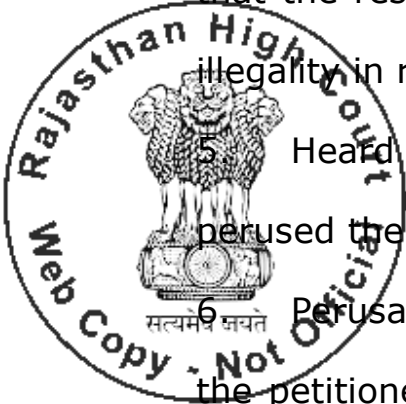
4. *Per contra*, learned counsel appearing on behalf of the respondents opposed the prayer and submitted that as per the provisions, contained under Annexure-C appended to the form seeking issuance of passport, it is mandatory to get consent of either the mother or father, in case their marriage is dissolved or they are residing separately and in case, the custody of the child has been assigned to one parent who is applying for passport of the minor child. Counsel submits that the judgment dated



09.06.2022 passed by the Family Court, Pali is not clear and specific about custody of the petitioner, hence, under these circumstances, it is not clear as to whether the petitioner is in custody of his mother or father. Under such circumstances, consent of both the parents is required. Counsel further submits that the respondent-passport authorities have not committed any illegality in refusing to issue passport to the petitioner.

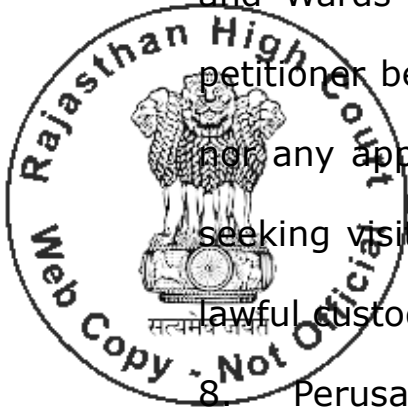
5 Heard and considered the submissions made at the Bar and perused the material available on the record.

6 Perusal of the record indicates that marriage of parents of the petitioner was solemnized on 21.02.2002, and out from their wedlock two children including the petitioner were born. It appears that on account of matrimonial dispute between parents of the petitioner, their marriage could not pull on well. Hence, under these circumstances, both of them started residing separately and separately approached the Family Court, Pali by way of filing two separate and distinct applications, inasmuch as on one hand, the husband submitted an application under Section 9 of the Act of 1955 for restitution of conjugal rights; whereas on the other hand, mother of the petitioner filed an application under Section 13 of the Act of 1955 for dissolution of their marriage. Both the matters were clubbed and consolidated together and were decided by the Family Court, Pali by way of a common decree and judgment dated 09.06.2022, whereby the application filed by the petitioner's father under Section 9 of the Act of 1955 was rejected and the divorce petition submitted by mother of the petitioner under Section 13 of the Act of 1955 was allowed and



accordingly, marriage of the parents of the petitioner was dissolved.

7. This fact is not in dispute that as per the pleadings, the petitioner is in custody of his mother. This fact is also not in dispute that till date, neither any application under the Guardians and Wards Act, 1890 has been submitted by the father of the petitioner before the competent Court of law seeking his custody, nor any application has been submitted by the petitioner's father seeking visitation rights. Meaning thereby that the petitioner is in lawful custody of his natural guardian-mother.



8 Perusal of the record further indicates that the petitioner has passed Secondary School Examination with flying colours. Now, for a better future and career, he wants to study abroad and for the purpose of going abroad, passport is required because passport is a singular document which enables a citizen to cross international boundaries and travel to other countries. In the absence of such singular document, i.e. passport, any incumbent is an alien to a foreign country.

9. Now, the question which remains for consideration of this Court is whether the passport authorities can decline to issue passport to the petitioner simply on a technical count that there is no clear and specific order passed by any Court of law with regard to custody of the petitioner?

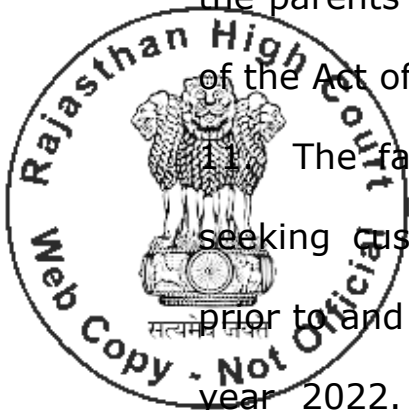
10. At present the age of the minor petitioner is 17 years. The marriage of his parents has been dissolved way back on 09.06.2022 and till date he is in custody of his mother, and his father has not submitted any application for his custody. Once the father of the petitioner has decided not to seek custody of the

minor petitioner by way of filing any appropriate application before the competent Court of law and not to file any application seeking visitation rights for the petitioner, it cannot be expected from the Family Court, Pali to pass a specific order with regard to the petitioner's custody, while deciding the applications submitted by the parents of the petitioner respectively under Sections 9 and 13 of the Act of 1955.

11. The father of the petitioner is not pursuing his claim and seeking custody of the petitioner and he is residing separately prior to and after passing of the impugned decree of divorce in the year 2022. The petitioner has already been staying with his mother. The petitioner is a bright student having secured outstanding marks in Class-10th, which has qualified him to be selected for study abroad.

12. Under these circumstances, in the considered opinion of this Court, the petitioner cannot be declined to travel abroad for the purpose of studies, on a technical count that passport cannot be granted to him in absence of consent of his father, who has no concern whatsoever with the domestic affairs of the petitioner or his mother.

13. It is a well-settled proposition of law that right to personal liberty conferred under Article 21 of the Constitution of India includes right to travel abroad and no person can be deprived of that right except according to the procedure established by law. It is held that the procedure prescribed by the law has to be just, fair and reasonable, not fanciful or oppressive or arbitrary. Right to travel abroad is an integral facet of fundamental right, as guaranteed under Article 21 of the Constitution of India. The



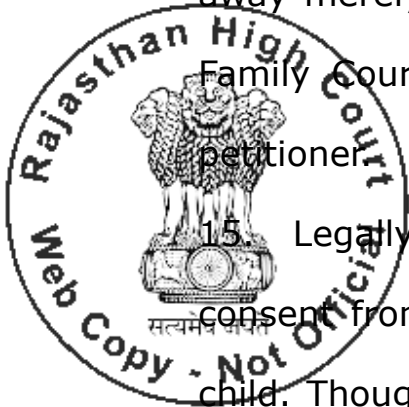
petitioner is certainly entitled to such Constitutional and Fundamental Right, as guaranteed under Article 21 of the Constitution of India.

14. This Court finds that such valuable Constitutional and Fundamental Right of the petitioner cannot be prejudiced or taken away merely on the ground that there is no order passed by the Family Court, Pali with regard to entitlement of custody of the petitioner.

15. Legally also, the passport issuing authority cannot insist for consent from both the parents for issuing a passport to a minor child. Though in earlier times, there was ambiguity and confusion regarding the procedure to be adopted when consent of both parents could not be obtained, while issuing a passport to a minor, but by virtue of several precedents, which were subsequently incorporated as guidelines in the Passport Manual, it has been provided that, if an affidavit is filed in the form of Annexure-C (earlier Annexure-G) of Schedule III of the Passport Rules, 1980, the passport issuing authority can issue a passport to a minor child, without insisting upon the consent of both the parents. Therefore, even if one of the parents of a minor child refuses to give consent, then also the passport issuing authority can still issue a passport to a minor, provided Annexure-C is submitted.

16. The Telangana High Court in the case of **L. Deepika vs. Union of India** reported in **2022 SCC OnLine TS 2481** has with dealt the identical situation in paras 17, 18 and 19 which reads as under:

"17. It is relevant to note that in Schedule III of Passport Rules 1980, it is stipulated, where the applicant parent is



not in a position to get consent of the other parent, for whatever reason, the parent applying for Passport of the minor may sign the form (application form) and submit a sworn affidavit as per Annexure-C.

18. In the Rules and also in the aforesaid Annexures, there is no mention that the petitioner has to obtain permission from the court on the ground that the other spouse is not giving consent. What is required is that the petitioner shall submit undertaking in Annexure-C which the petitioner herein had already submitted. As stated

above there are matrimonial disputes between the petitioner and 3rd respondent. He had filed the aforesaid FCOP No. 253 of 2020 seeking dissolution of marriage on the ground of cruelty. Therefore, it is practically impossible for the petitioner to get the consent of the 3rd respondent, due to the aforesaid strained relations between them. However, she had submitted the aforesaid undertaking in Annexure-C. She has specifically stated that she will take responsibility with regard to the aforesaid case. Admittedly there is no crime pending against the petitioner and 3rd respondent has also not filed any custody petition or guardianship petition.

19. In view of the aforesaid discussion, the impugned proceedings dated 29-3-2022 are illegal and also contrary to the Passport Rules and the principle laid down by High Court of Kerala in the aforesaid judgments. Therefore, the same are set aside. The 2nd respondent is directed to consider the application submitted by the petitioner dated 22.12.2021 and issue Passport to the minor son of the petitioner."

17. In the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary



needs in dealing with passport applications. The present case is an example of a student being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the passport authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the passport authority cannot be countenanced.



18. Generally the parents worry about what their children would do in future yet they forget that their children are someone today.

They think about their future but they forget about their present.

Unless the present of the children is fine and taken care of, how would their future become bright.

19. The right of a child, such as the petitioner, to get a passport issued for going abroad for the purpose of studies for betterment of his future career cannot be allowed to be ruined and violated in absence of consent of the father, who has been divorced by his wife, i.e. the child's mother.

The future and career of the petitioner cannot be allowed to remain dependent upon the wish, will and desire of one of his parents. The valuable constitutional right of the petitioner cannot be prejudiced and must not be allowed to be taken away, merely because the consent of his father is not there on the application for getting passport. The petitioner cannot be compelled to approach his father to get his consent on the said application.

20. Considering the overall facts and circumstances of the case, the instant writ petition is liable to be and is hereby allowed. The

respondent-passport authority is directed to issue passport to the petitioner forthwith without any further delay.

21. Pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

