

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

Reserved on: 17.07.2023

Pronounced on: 19.07.2023

**WP(C) No.687/2023**

**CM No.1621/2023**

**HAZIK MUSHTAQ**

**... PETITIONER(S)**

*Through: - Mr. R. A. Jan, Sr. Advocate,  
With Mr. Aswad Attar, Advocate.*

Vs.

**UT OF J&K AND OTHERS.**

**...RESPONDENT(S)**

*Through: - Ms. Rekha Wangnoo, GA, vice  
Mr. Ilyas Nazir Laway, GA-for R1 to R3 & R5  
Mr. T. M. Shamsi, DSGI-for R4.*

**CORAM:HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1. The petitioner has challenged the action of respondents No.2 and 3 of withholding his clearance report. A direction has also been sought upon respondents No.2 and 3 to initiate the process of verification required to be undertaken for the purpose of re-issuance of travel document/passport in favour of the petitioner. A further direction upon respondent No.4 has been sought to process the application of the petitioner for re-issuance of passport/travel document.

2. As per the case of the petitioner, he was falsely implicated in case FIR No.147/2020 for offences under 447, 354, 323, 382, 201 of IPC registered with Police Station, Saddar, Srinagar. It has been submitted that the petitioner was a juvenile at the time of alleged occurrence, as a result of which, the inquiry under Section 14 of the Juvenile Justice (Care and

Protection of Children) Act, 2015 (hereinafter referred to as the Act of 2015) was initiated against him before the Juvenile Justice Board. According to the petitioner, he has made the grade for admission to MBBS Degree Course in Medical College at Dhaka, Bangladesh and, as such, he applied for re-issue of passport/travel document that had expired, by making an online application in the prescribed form to respondent No.4, the Passport Authority. It has been submitted that despite having applied for re-issue of passport several months ago, the same has not been issued in favour of the petitioner.

3. It has been contended by the petitioner that he had applied for his discharge and termination of the proceedings before the Juvenile Justice Board but his application was rejected by the said Board in terms of order dated 30.09.2022. The aforesaid order was challenged by the petitioner by way of a petition under Section 482 of the Cr. P. C bearing CRM(M) No.64/2023 and an interim order came to be passed by this Court on 23.02.2023, whereby proceedings pending before the Juvenile Justice Board were stayed.

4. It has been further contended by the petitioner that keeping in view the object of the Act of 2015 as contained in Section 3 of the said Act, the respondents could not have withheld the travel document of the petitioner. It has been submitted that the inquiry proceedings pending before the Juvenile Justice Board by no stretch of imagination can be termed as

‘criminal proceedings’, as such, there was no justification for the respondents to withhold the travel document of the petitioner.

5. No reply has been filed by the respondents. However, Mr. T. M. Shamsi, learned counsel appearing for respondent No.4, has submitted that the travel document in favour of the petitioner could not be issued in view of the provisions contained in Section 6(2)(f) of the Passport Act, 1967. He has submitted that the Passport Authority is vested with power to refuse to issue a passport /travel document on the ground that the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

6. I have heard learned counsel for the parties and perused the record of the case.

7. The only issue that arises for determination in this petition is as to whether the proceedings pending against the petitioner before the Juvenile Justice Board would qualify as proceeding pending before the Criminal Court. If answer to the aforesaid question is in affirmative, then clause (f) of Section 6(2) of the Passport Act would get attracted and the action of respondent No.4 in not issuing the travel document in favour of the petitioner would be in accordance with law.

8. The learned Senior counsel appearing for the petitioner has vehemently argued that the Act of 2015 is a welfare legislation which has been enacted with the sole objective of providing proper care, protection, development, treatment and social re-integration to the children in

conflict with law by adopting a child-friendly approach in the adjudication and disposal of matters involving such children. In this regard, the learned Senior counsel has laid much emphasis on the provisions contained in Section 3 of the Act of 2015, which lays down general principles to be followed in administration of the Act. These include the principle of presumption of innocence, principle of best interest of the child, principle of non-stigmatizing semantics, principle of repatriation and restoration and similar other principles. It has been submitted that the inquiry proceedings initiated before the Juvenile Justice Board in terms of Section 14 of the Act of 2015, having regard to their nature, cannot be termed as ‘criminal proceedings’, as such, the provisions contained in Section 6(2)(f) of the Passport Act are not attracted to the instant case. The learned Senior counsel has further submitted that even otherwise, the proceedings before the Juvenile Justice Board have been stayed by this Court, as such, there should not be any legal impediment in re-issuing the travel document in favour of the petitioner, particularly having regard to the fact that his academic career is at stake.

9. If we have a look at the provisions contained in the Act of 2015, Section 4 of the said Act provides for constitution of Juvenile Justice Board. It comprises, inter alia, a Metropolitan Magistrate or a Judicial Magistrate of First Class with at least three years’ experience who acts as a “Principal Magistrate” of the Board. It also provides that Bench of a Juvenile Justice Board shall have powers conferred by the Code of

Criminal Procedure on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

10. Another provision which is required to be noticed for determining the nature of the proceedings pending before a Juvenile Justice Board is clauses (d) and (e) of Section 14(5) of the Act of 2015, which provides the procedure for holding an inquiry by the Board regarding child in conflict with law. Clause (d) of sub-section (5) of Section 14 provides that cases of petty offences shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure whereas clause (e) provides that inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure. Similarly, sub-section (2) of Section 15 of the Act provides that if the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board has to follow the procedure for trial in summons cases under the Code of Criminal Procedure.

11. From a conjoint reading of the aforesaid provisions, it is clear that the Board possess the powers of a Judicial Magistrate, 1<sup>st</sup> Class, and while holding inquiry regarding a child in conflict with law, it has to follow the procedure prescribed for trial of summons cases in case of serious offences and in the case of petty offences, it has to follow the procedure prescribed for summary proceedings under the Code of Criminal Procedure. Thus, the provisions of the Code of Criminal Procedure, so far

as they relate to trial of summons cases and trial of petty offences, are applicable to the summary cases before the Juvenile Justice Board which is to be presided over by a Judicial Magistrate of First Class. Thus, the Juvenile Justice Board, in the matter of holding enquiry regarding a child in conflict with law, has all the trappings of a Criminal Court.

12. Section 6 of the Criminal Procedure code defines the classes of Criminal Courts and according to it, besides the classes of Criminal Courts mentioned in the said provision, the courts constituted under any law, other than created under the Code, can also be termed as Criminal Court, meaning thereby that if a forum is created by any other law which has the trappings of a Criminal Court, the same can be termed as a Criminal Court. By this logic, a Juvenile Justice Board, whose proceedings are governed by the Criminal Procedure Code, can certainly be termed as a 'Criminal Court' constituted under the Act of 2015.

13. Having held that the Juvenile Justice Board has all the trappings of a Criminal Court, the proceedings against the petitioner which are pending before the said Board in respect of offences under Sections 447, 354, 323, 382, 201 of IPC would certainly attract the provisions under Section 6(2)(f) of the Passport Act. Merely because the proceedings before the Juvenile Justice Board have been stayed does not mean that no proceedings against the petitioner are pending before the said Board. Stay of proceedings means putting a halt to the proceedings. It does not mean that the proceedings have ceased to exist. Unless the proceedings are

quashed by this Court, it cannot be stated that the proceedings against the petitioner are not pending before the Juvenile Justice Board. Therefore, the action of respondent No.4 in withholding the passport/travel document in favour of the petitioner is justified in view of the provisions contained in Section 6(2)(f) of the Passport Act.

14. Learned counsel for respondent No.4, Mr. Shamsi, has produced a copy of Office Memorandum dated 10<sup>th</sup> October, 2019, issued by the Government of India, Ministry of External Affairs, PSP Division, in which reference is made to Notification GSR 570(E) dated 25.08.1993, which reads as under:

*GSR 570(E) - In exercise of the powers conferred by clause (a) of section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. GSR 298(E) dated the 14th April 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of subsection (2) of Section 6 of the said Act, subject to the following conditions, namely: -*

- (a) the passport to be issued to every such citizen shall be issued-*
- (i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or*
  - (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year;*
  - (iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year;*
  - (iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.*

(b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a)(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.”

15. In view of the aforesaid notification, notwithstanding the provisions contained in Section 6(2)(f) of the Passport Act, which is attracted to the instant case, the petitioner can be issued passport/travel document subject to the appropriate orders from the Court where the proceedings are pending, which in the instant case is Juvenile Justice Board, Srinagar. Therefore, it shall be open to the petitioner to approach Juvenile Justice Board, Srinagar, for seeking appropriate orders for issuance of passport/travel document in his favour. If and when such an application is made by the petitioner before the said Board, the same shall be considered by the Board on its own merits, notwithstanding the stay of proceedings ordered by this Court in CRM(M) No.64/2023.

16. The instant petition is disposed of in the above terms.

**(SANJAY DHAR)**  
**JUDGE**

**Srinagar,**  
**19.07.2023**  
**“Bhat Altaf, PS”**

*Whether the order is speaking:* **Yes/No**  
*Whether the order is reportable:* **Yes/No**