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CONSTITUTIONAL LAW

Pending Criminal Case ? Passport Denial: Supreme Court on Renewal Rights under the Passports Act

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Introduction

The right to hold a passport and to travel abroad has long been recognised as an intrinsic facet of personal liberty under Article 21 of the Constitution of India. While the State is empowered to regulate this right through statutory restrictions, such regulation must operate within clearly defined legal limits and remain subject to constitutional safeguards. The Supreme Court's decision in *Mahesh Kumar Agarwal v. Union of India & Anr.*[1] offers a detailed exposition of these limits, particularly in the context of renewal of passports where criminal proceedings are pending.

The judgment undertakes a close examination of the Passports Act, 1967, with specific focus on Sections 5, 6(2)(f), 7, 8 and 22, alongside Notification GSR 570(E) dated 25th August 1993 and the Office Memorandum dated 10th October 2019. By harmonising statutory interpretation with constitutional principles, the Court clarifies that the pendency of criminal proceedings does not operate as an absolute bar to passport renewal and that administrative authorities must give due weight to judicial permissions granted by competent criminal courts.

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Factual Background (Brief)

The appellant, an Indian citizen, was the holder of an ordinary passport issued in August 2013, valid for a period of ten years and expiring on 28 August 2023. During the subsistence of the passport, multiple criminal proceedings came to be instituted against him, including a case investigated by the National Investigation Agency (NIA) and a separate prosecution arising out of the coal block allocation matters.

In the NIA case, the appellant was arrayed as an accused in proceedings alleging offences under the Indian Penal Code, 1860, the Unlawful Activities (Prevention) Act, 1967, and allied statutes. Pursuant to interim directions issued during appellate proceedings before the High Court of Jharkhand, the appellant was restrained from leaving India and directed to deposit his passport before the trial court. Subsequently, the appellant was granted bail, subject to conditions, including continued judicial control over his travel outside India.

Separately, the appellant was convicted in a CBI-prosecuted coal block case by the Special Judge at New Delhi and sentenced to imprisonment. On appeal, the Delhi High Court suspended the sentence while expressly stipulating that the appellant shall not leave the country without prior permission of the Court.

As the expiry of the appellant's passport approached, he sought permission from the NIA Court, Ranchi, to renew the passport for a further period of ten years. The NIA Court granted no objection for renewal for that limited purpose, directed that the renewed passport be re-deposited with the Court, and imposed an undertaking restraining the appellant from travelling abroad without prior court approval. Thereafter, the appellant also obtained permission from the Delhi High Court, which expressly held that there was no justification to deny renewal of the passport for the normal period of ten years, while continuing the restriction on foreign travel.

Armed with these judicial permissions, the appellant applied for re-issue of his passport before the Regional Passport Office, Kolkata, fully disclosing the pendency of criminal proceedings and the conditions imposed by the criminal courts. The passport authority, however, declined to renew the passport for the normal period, citing the statutory bar under Section 6(2)(f) of the Passports Act, 1967, and taking the view that the permissions granted by the criminal courts were insufficient in the absence of an express order permitting foreign travel for a specified period.

The appellant's challenge to this decision was rejected by the Calcutta High Court, both at the single-judge and intra-court appellate stages, on the reasoning that the pendency of criminal proceedings attracted a continuing embargo under Section 6(2)(f). Aggrieved by this interpretation and the consequent denial of passport renewal, the appellant approached the Supreme Court, raising substantial questions concerning the scope of statutory restrictions, exemptions, and constitutional liberty under the Passports Act, 1967.

Core Issues:

1. Whether the pendency of criminal proceedings under Section 6(2)(f) of the Passports Act, 1967 justifies refusal of passport renewal despite judicial permission granted under the exemption framework of Section 22 read with GSR 570(E).
2. Whether denial of passport renewal, notwithstanding continued judicial control over foreign travel, amounts to an unreasonable and disproportionate restriction on personal liberty under Article 21 of the Constitution of India.

Statutory Scheme and Exemption Framework

The Supreme Court undertook a conjoint reading of the relevant provisions of the Passports Act. **Section 5** governs applications for issuance or re-issue of passports and makes such issuance expressly subject to other provisions of the Act. **Section 6(2)(f)** mandates refusal where criminal proceedings are pending, but only "subject to the other provisions" of the Act.

Sections 7 and 8 deal with duration and extension of passports, permitting issuance for shorter periods with reasons, while applying the same statutory conditions to extensions as to original issuance. **Section 22** empowers the Central Government to exempt persons or classes of persons from the operation of the Act in public interest.

It is in exercise of this power that **Notification GSR 570(E) dated 25th August, 1993** was issued, creating a conditional exemption for persons facing criminal proceedings, subject to permission from the concerned court and compliance with specified safeguards. The **Office Memorandum dated 10 October 2019** reiterates the application of this notification but does not create any new substantive restriction.

Supreme Court's Findings

1. **Section 6(2)(f) Is Not an Absolute Bar:** The Supreme Court held that the embargo under Section 6(2)(f) of the Passports Act, 1967, relating to the pendency of criminal proceedings, is not absolute. The provision is expressly subject to the other provisions of the Act, particularly Section 22, which empowers the Central Government to grant exemptions. Consequently, once an applicant falls within the exempted class recognised under Notification GSR 570(E) dated 25 August 1993, the statutory bar under Section 6(2)(f) stands relaxed to that extent.
2. **Judicial Permission Triggers the Statutory Exemption:** The Court found that where competent criminal courts have consciously granted *no objection* for renewal of a passport and imposed conditions regulating foreign travel, the exemption under GSR 570(E) becomes operative. The absence of a specific order permitting an immediate or time-bound foreign trip does not disentitle an applicant from renewal. Judicial control over travel, through conditions requiring prior court permission, sufficiently addresses the legislative concern underlying Section 6(2)(f).
3. **Passport Renewal and Permission to Travel Are Distinct:**
   The Court emphasised the legal distinction between the possession of a valid passport and the right to travel abroad. While criminal courts retain full authority to permit or prohibit foreign travel, denial of passport renewal on speculative apprehensions of misuse amounts to an impermissible substitution of administrative discretion for judicial supervision.
4. **Conviction Pending Appeal Does Not Attract Section 6(2)(f):** The Court clarified that Section 6(2)(f) applies to proceedings at the pre-conviction stage. A subsisting conviction with a pending appeal falls within a different statutory framework, primarily Section 6(2)(e), and cannot be used to reinforce a refusal under Section 6(2)(f), particularly where the appellate court has itself granted permission for renewal.
5. **Administrative Authorities Cannot Override Judicial Orders:** Passport authorities were held to be bound to give due effect to judicial permissions granted by criminal courts. Administrative instructions, including the Office Memorandum dated 10 October 2019, cannot be interpreted so as to dilute or nullify the exemption framework under Section 22 and GSR 570(E).
6. **Article 21 Requires Proportionality:** Reaffirming settled constitutional doctrine, the Court held that the right to hold a passport forms part of the right to personal liberty under Article 21 of the Constitution of India. Where criminal courts have imposed adequate safeguards to secure the presence of the accused, an outright refusal to renew a passport constitutes a disproportionate and unreasonable restriction on personal liberty.

7. **Direction to Re-Issue Passport for Normal Validity:** In view of the express permission granted by the Delhi High Court and the conditions imposed by the NIA Court, the Supreme Court directed the respondents to re-issue an ordinary passport for the normal period of ten years, subject to continued compliance with all conditions imposed by the criminal courts.

Constitutional Dimension: Article 21

The Court reaffirmed that:

- The right to hold a passport and to travel abroad is an integral facet of personal liberty under Article 21.
- Restrictions must be fair, just, reasonable, and proportionate.

Where criminal courts have already imposed safeguards ensuring presence of the accused, indefinite denial of passport renewal amounts to a disproportionate restriction.

Key Legal Principles Laid Down

1. Section 6(2)(f) is not an absolute bar and must be read with Section 22 and GSR 570(E).
2. Judicial permission to renew a passport, coupled with restrictions on travel, satisfies statutory requirements.
3. Passport authorities cannot demand specific future travel details at the stage of renewal.
4. Denial of renewal, despite court permissions, violates Article 21.
5. Possession of a passport and permission to travel abroad are distinct legal concepts.

Conclusion

The decision in *Mahesh Kumar Agarwal v. Union of India* reaffirms that statutory restrictions under the Passports Act cannot be applied in isolation or with mechanical rigidity. By giving full effect to the exemption framework under Section 22 and GSR 570(E), the Supreme Court restored the balance between legitimate State interests and individual liberty.

The judgment makes it clear that procedural safeguards are not meant to crystallise into permanent disabilities, particularly where criminal courts themselves do not consider such restrictions necessary. It stands as an important precedent ensuring that administrative discretion remains subordinate to statutory intent, judicial oversight, and constitutional guarantees under Article 21.

By harmonising Sections 5, 6, 7, 8, 10 and 22 of the Passports Act with constitutional principles, the Supreme Court has ensured that procedural safeguards do not harden into permanent disabilities, and that liberty remains the rule, not the exception.

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[1] 2025 INSC 1476 (ARISING OUT OF SLP (CIVIL) NO. 17769 OF 2025)

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