

2025:PHHC:050225



106

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-8342-2025

Date of Decision: 25.03.2025

Surender Kumar Bansal

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Lupil Gupta, Advocate,
Ms. Hardeep Gandhi, Advocate and
Mr. Rahul, Advocate
for the petitioner.

Ms. Amrita Singh, Advocate for
Ms. Saigeeta Srivastava, Advocate
for respondents No.1 and 2.

HARSH BUNGER J. (ORAL)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Mandamus for directing respondent No.2 (Regional Passport Officer, Chandigarh) to decide legal notice dated 23.10.2024 (Annexure P-7) served by the petitioner.

2. In the said legal notice dated 23.10.2024 (Annexure P-7), the

petitioner has prayed for cancellation of passport of Parshant Gupta (respondent No.5) son of Sanjam Gupta. It is stated that Tanvi Bansal (daughter of petitioner) was got married to Parshant Gupta (respondent No.5) on 19.10.2018, wherein the petitioner claims to have spent about Rs.35 Lacs. It is alleged by the petitioner that respondent No.5 and his family members were not happy with the dowry, on account of which, they were harassing the daughter of petitioner; and ultimately, case FIR No.174 dated 12.04.2022 was got registered at Police Station City Mandi Dabwali, District Sirsa, by the petitioner against respondent No.5 and his family members.

2.2 It is borne out from the paper book that as regards respondent No.5 (Parshant Gupta), Look Out Circular has already been issued on 21.10.2022, however, his other family members have already been granted anticipatory bail by the Court(s) below, vide separate orders dated 13.05.2022 (Annexure P-4) and 19.11.2022 (Annexure P-3).

2.3 Petitioner claims that despite lodging of FIR No.174 dated 12.04.2022, respondent No.5 is living abroad and has not joined the proceedings in the said case. Accordingly, it is prayed that passport of respondent No.5 be cancelled.

3. Heard.

4. As per petitioner's own version, Look Out Circular already stands issued against respondent No.5 (Parshant Gupta), although a copy thereof has not been attached with the instant writ petition.

5. It is well settled that the decision to impound or revoke the passport of a citizen would be purely in the domain of Passport Authorities, who are competent to take action in accordance with the provisions of

the Passports Act, 1967 and the Rules/Instructions framed thereunder.

5.1 Hon'ble Supreme Court of India in "**Suresh Nanda Versus CBI**", (2008) 3 SCC 674; observed as under:-

".....In our opinion, while the police may have the power to seize a passport under Section 102(1) Criminal Procedure Code, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.

12. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanath a Aiyar (2nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law". Thus, the word "impounding" really means retention of possession of a good or a document which has been seized.

13. Hence, while the police may have power to seize a passport under Section 102 Criminal Procedure Code if it is permissible within the authority given under Section 102 of Criminal Procedure Code, it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Criminal Procedure Code), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide

*whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any opportunity of hearing to a party vide **State of Orissa Versus Binapani Dei [AIR 1967 Supreme Court 1269]**.*

14. *In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).*

15. *In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Criminal Procedure Code states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Criminal Procedure Code is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg. 133). This principle is expressed in the maxim "Generalia specialibus non derogant". Hence, impounding of a passport cannot be done by the Court under Section 104 Criminal Procedure Code though it can impound any other document or thing..."*

5.2 In "**Hardik Shah Versus Union of India**", 2022 AIR (Madhya Pradesh) 57; the High Court of Madhya Pradesh noted that

detaining a traveller's passport for unjustifiable reasons interferes with his fundamental right to subsistence protection under Article 21 of the Indian Constitution. It was held that a person's passport cannot be seized just because a case involving a violation of Section 498-A of the Indian Penal Code (IPC) is ongoing, or a red corner notice has been issued against him.

6. Considering the aforementioned circumstances, I find no merit in the instant writ petition and the same is accordingly dismissed; however, leaving it open to the petitioner to pursue the matter before the Passport Authorities, if so advised.

7. All pending application(s), if any, shall also stand closed.

25.03.2025

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No