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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 21.06.2016

ORDERS DELIVERED ON : 12.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.9954 of 2016

and

W.M.P.(MD)No.7860 of 2016

P.K.Selvaraj

.. Petitioner

vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2.The Superintendent of Police,
Madurai District,
Mdurai - 625 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent issued in Letter No.1300056-CPC MDU dated 25.04.2016 and quash the same as illegal and consequently direct the 1st Respondent to follow the Notification issued by Government of India Ministry of External Affairs in G.S.R.No.570 (E) dated 25.08.1993 and in the light of the order dated 27.05.2010 passed by this Honble Court in W.P.(MD)No.6623 of 2010.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

For R1 : Mr.D.Saravanan

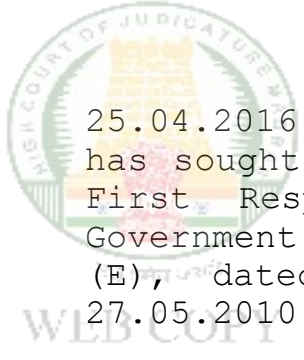
For R2 : Mr.S.Chandrasekar

Government Advocate

O R D E R

Heard both sides.

<https://hcservices.courtservice.in/CaseView/> 2. The Petitioner has filed the present writ petition praying for passing of an order by this Court in calling for the records of the First Respondent issued in Letter No.1300056-CPC MDU, dated



25.04.2016 and to quash the same as an illegal one. Further, he has sought for passing of an order by this Court in directing the First Respondent to follow the Notification issued by the Government of India Ministry of External Affairs in G.S.R.No.570 (E), dated 25.08.1993 and in the light of the order dated 27.05.2010 passed by this Court in W.P.(MD)No.6623 of 2010.

3. According to the Petitioner, six false cases were registered against him and others in respect quarry operations in (i) Crime No.162 of 2012 on the file of Keelavalavu Police Station, Madurai District; (ii) Crime No.470 of 2012 on the file of Y.Othakadai Police Station, Madurai; (iii) Crime No.670 of 2012 on the file of Melur Police Station, Madurai District (iv) Crime No.555 of 2012 on the file of Y.Othakadai Police Station, Madurai; (v) Crime No.396 of 2013 on the file of Melur Police Station and (vi) Crime No.417 of 2013 on the file of Melur Police Station, Madurai District. He obtained Anticipatory Bail orders in all the aforesaid cases and abide the conditions imposed on him. It is averred by the Petitioner in his writ affidavit at paragraph No.7 that in so far as the case in (i) Crime No.162 of 2012 on the file of Keelavalavu Police Station, Madurai District; (ii) Crime No.470 of 2012 on the file of Y.Othakadai Police Station, Madurai; (iii) Crime No.555 of 2012 on the file of Y.Othakadai Police Station, Madurai; (iv) Crime No.396 of 2013 on the file of Melur Police Station and (v) Crime No.417 of 2013 on the file of Melur Police Station, Madurai District. They are only under investigation stage and final report was not filed before the Court. However, in respect of Crime No.670 of 2012, on the file of Melur Police Station, Madurai District, he has not received any summons from the Court.

4. The stand of the Petitioner is that the First Respondent/Regional Passport Officer, Madurai had issued a show cause notice, dated 03.09.2015 in File No.MDUE007033/08, Policy Ref.No.1300056_CPC_MDU, requiring him to submit explanation about the pendency of criminal case against him for necessary action. On receipt of the said notice, he sent his explanation dated 30.09.2015 to the First Respondent. The First Respondent, after receiving his explanation by means of order dated 11.03.2016, directed him to surrender his passport within ten days from the date of receipt of the letter for impounding and that the said letter was received on 17.03.2016.

5. The Learned Counsel for the Petitioner urges before this Court that the impugned order of the First Respondent, dated 25.04.2016 impounding the Petitioner's passport was passed without application of mind and mechanically the same was issued based on the recommendation of the second Respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

6. It is also represented on behalf of the Petitioner that the Petitioner gave a detail reply to the show cause notice clearly



pointing out the legal position in respect of issuance of passport and impounding of passport, but the First Respondent had failed to apply his mind before passing the impugned order.

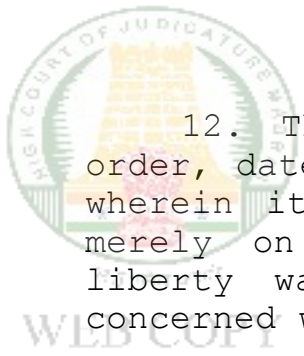
7. The prime contention advanced on behalf of the Petitioner is that mere pendency of the First Information Report is not to be construed as pendency of criminal proceedings in respect of the offences purported to have been committed by the Petitioner before the Criminal Court and further till the case is taken cognisance by the Court, it cannot be construed as pendency of criminal case to contract Section 10(3)(e) of the Passport Act, 1967.

8. The Learned Counsel for the Petitioner takes a legal plea that 'freedom of movement' cannot be curtailed by the First Respondent under the guise of alleged report of the second Respondent, which is violative of Article 21 and Article 19(1)(a) of the Constitution.

9. Also, the Learned Counsel for the Petitioner brings it to the notice of this Court that after the decision of Hon'ble Supreme Court in **MENKA GANDHI v. UNION OF INDIA reported in 1978 1 SCC 248**, the Government of India in exercise of power conferred under Section 22(a) of the Passport Act, issued a notification on 16.08.1979 exempting the citizens of India against whom proceedings in respect of an offence alleged to have been committed by him are pending before any Criminal Court in India and who produce orders from the court concerned permitting them to depart from India from the operation of Section 6(2) (f) of the Passport Act.

10. Continuing further, the Learned Counsel for the Petitioner emphatically projects an argument that the Government of India by means of notification, dated 25.08.1993, had modified certain conditions mentioned in the earlier notification. As such, the citizens against whom criminal cases are pending, are to be exempted from the operation of Section 6(2) (f) of the Passport Act, if they produce orders from the court concerned permitting them to travel abroad.

11. The Learned Counsel for the Petitioner relies on the decision in **SHREE PRASAD KUNDALIA v. UNION OF INDIA reported in (1998) 2 Cal. LT 415**, wherein it was held that 'every pendency of all types of criminal case would not automatically disentitle an applicant to refuse a passport. The Passport authority in the light of the material placed before him has to decide independently as to whether the pendency of any case or case is such an event, which should disentitle the applicant, in respect of the issuance of passport'.



12. The Learned Counsel for the Petitioner refers to the order, dated 27.05.2010, in W.P.(MD)No.6623 of 2010 of this Court, wherein it is held that 'renewal of passport cannot be refused merely on the ground of pendency of criminal case. Further, liberty was granted to the Petitioner to approach the Court concerned with appropriate application seeking to go abroad etc.'

13. Per contra, it is the submission of the learned Central Government Standing Counsel that as against the Petitioner, cases were registered in the respective Crime numbers and they are as under:-

"1.Keelavalavu Police Station Cr.No.162/12 under Sections 447, 109, 379, 406, 434, 465, 467, 468, 471 and 304(ii) IPC r/w. 109, 114, 511 of IPC and 3(i) & 4 of TNPPDL Act & 6 r/w.3(a), 4(a) of Explosive Substances Act.

2.Othakadai Police Station Crime No.470 of 2012 under Sections 447 IPC r/w 3(1) of TNPPDL Act.

3.Othakadi Police Station Crime No.555/12 under Sections 406, 420 IPC.

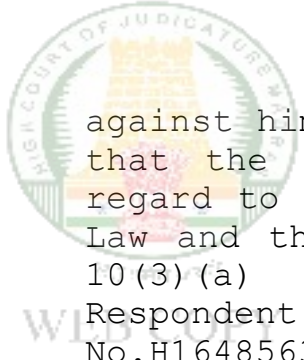
4.Melur Police Station Crime No.396/13 under Sections 447, 430, 379, 304(ii) r/w 511 IPC and Sec. 3(a), 4(1) of Explosive Substances Act, 3(i) (ii) of TNPPDL Act and also under Sections 4(1), 4(1-A) and 21(b) MMDR Act.

5.Melur Police Station Crime No.417/13 under Sections 120(b), 406, 420, 434, 447, 430, 379, 304(II) r/w 511 IPC and 3(a) 4(a) of Explosive Substances Act, 3(i) (ii) of TNPPDL Act and 4(A), 4(1-A), 21(b) MMDR Act."

14.It is the stand of the First Respondent that the Inspector of Police/Investigation Officer, Melur Circle, Madurai District, in the report dated 23.08.2013 had therefore, recommended for impounding of passport issued to him based on the pending criminal cases. Further, a show cause notice dated 06.09.2013 was issued to the Petitioner seeking explanation as to why action should not be initiated in terms of the Passports Act, 1967 and the Petitioner had not responded to the said show cause notice.

15.It is the plea of the First Respondent that the Superintendent of Police, Madurai District, in the report dated 05.08.2015 had confirmed that a criminal case in P.R.C.No.06 of 2014 in Crime No.670 of 2012 under Sections 4 and 5(a) of Explosive Substances Act and 120(b) of IPC & 3(a), 4(b), 5(a) & 6 of Explosive Substances Act, 1908, is pending against the Petitioner before the learned Judicial Magistrate, Melur.

16.The learned Central Government Standing Counsel for the first respondent brings it to the notice of this Court that on ~~reference to the~~ Police report dated 05.08.2015 as stated supra, a show cause notice, dated 03.09.2015 was issued to the Petitioner, seeking an explanation as to why action should not be initiated



against him in accordance with the Passports Act, 1967 and further that the Petitioner had not furnished a proper explanation in regard to the pending criminal case against him before a Court of Law and therefore, the action of the Petitioner attracts Section 10(3)(a) of the Passports Act, 1967. Therefore, the First Respondent had impounded the passport of the Petitioner bearing No.H1648563, dated 31.10.2008 under intimation to him as per letter dated 11.03.2016 with an advice to apply for restoration of passport facilities after completion of criminal cases pending against him before Court of Law or with the copies of Court order permitting him to travel abroad.

17. In response, the learned Government Advocate for the second Respondent contends that the Petitioner is involved in the following Criminal Cases and the details are as under:-

"(i) Keelavalavu Police Station Cr.No.162/12 under Sections 120(B) r/w 447, 379, 109, 120(B) 406, 409, 420, 430, 434, 465, 467, 468, 471 and 304(ii) IPC r/w. 109, 114, 511 of IPC and 3(i), 4 of TNPPDL Act 1992 and 6 r/w 3(a), 4(a) of Explosives Substances Act, 1908.

(ii) Melur Police Station Crime No.396/13 under Sections 120(B), 447, 379, 406, 420, 430, 434, 465, 467, 468, 471, 304(ii) IPC r/w 511, 109, 114 IPC and Sec. 3(i) (ii), 4 of of TNPPDL Act 1992 and Section 6 r/w 3(a) 4 (a) of Explosive Substances Act.

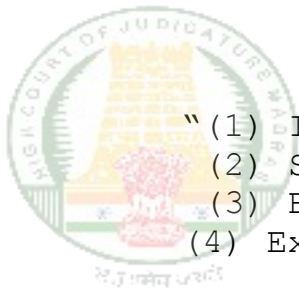
(iii). Melur Police Station Crime No.417/13 under Sections 120(B), 447, 109, 379, 406, 420, 434, 465, 467, 468, 471 IPC r/w 511, 114 IPC and Section 3(i) (ii), 4 of TNPPDL Act and Section 6 r/w 3(a) 4(a) of Explosive Substances Act.

(iv) Melur P.S.Cr.No.670/12 U/s. 6, 3(a), 4(a), 4(b), 5(a) and 6 of Explosive Substances Act, 1908 r/w 120 B IPC.

(v). Othakadai Police Station Crime No.470 of 2012 under Sections 147, 447 IPC & 3(i) of TNPPDL Act r/w 109, 114, 149 IPC.

(vi). Othakadi Police Station Crime No.555/12 under Sections 406, 420 IPC r/w 34 IPC."

18. On behalf of the second Respondent, it is projected before this Court that this Court while granting anticipatory bail to the Petitioner, had ordered him to surrender his passport before the learned Judicial Magistrate, Melur, and this was ordered so as to prevent him from travelling to foreign countries and fleeing from the clutches of Law. That apart, the Petitioner was served with summons on 03.06.2016 in Melur Police Station Crime No.670 of 2012 under Section 6, 3(a), 4(a), 4(b), 5(a) and 6 of Explosive Substances Act, 1908 r/w 120 B IPC for appearance before the learned Judicial Magistrate, Melur on 15.07.2016. Moreover, for the above pending investigation cases many more documents are yet to be collected from the following departments:-



- "(1) Income Tax
(2) Sales Tax
(3) Banks
(4) Export and Import Details from the Customs Department."

19. The learned Government Advocate for the second Respondent contends that if the Petitioner is allowed to travel to foreign country, he may abscond at any time and settle in foreign countries and he may not be able to answer the charges framed against him by the trial Court in P.R.C.No.06 of 2014. Besides the above, he has to attend each and every hearing before the trial Court and in so far as Melur Police Station Crime No.670 of 2012, in P.R.C.No.06 of 2014, the Petitioner is the first accused and charge sheet was filed against him before the learned Magistrate under Sections 6, 3(a), 4(a), 4(b), 5(a) and 6 of Explosive Substances Act, 1908 r/w 120 B IPC.

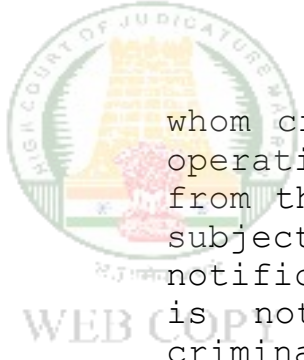
20. As a matter of fact, the trial Court took cognisance of the offences in P.R.C.No.06 of 2014 dated 28.01.2014 and the process against the Petitioner is being issued. Therefore, if the Petitioner is allowed to travel to foreign countries, the entire criminal proceedings would come to stand still and in view of the pendency of six criminal cases against him, the passport cannot be issued to him.

21. This Court has heard the arguments of the Learned Counsel for the Petitioner and the Respondents and noticed their contentions.

22. It is to be noted that the notification of the Government of India, dated 25.8.2013 in G.S.R.No.570(E), under Section 22(c) of the Passport Act, 1967, issued by the Ministry of External Affairs, New Delhi refers to the exemptions being granted to the citizens of India against whom proceedings in respect of the offence alleged to have been committed by them are pending before a Criminal Court in India and on production of orders from the Court concerned permitting them to depart from India from the operation of the provisions of Clause (f) of Sub-Section (2) of Section 6 of the Act, subject to the conditions prescribed therein.

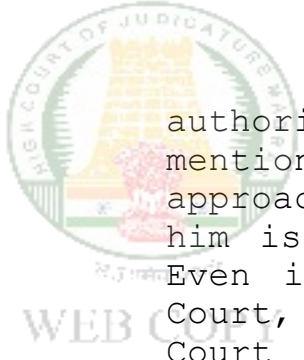
23. One cannot brush aside an important fact that the Hon'ble Supreme Court in **Menaka Gandhi's case** reported in **1978(2) SCJ at Page 312**, had considered the validity of Section 10(3)(c) of Passport Act. Further, it is not out of place for this Court to relevantly point out the decision in **Deepak Dwarkasingh .vs. Union of India** reported in **AIR 1997 Bombay 181**, wherein, at Special Page 185 and 186 at Para 10, it is observed as under :

<https://hcservices.ecourts.gov.in/hcservices/> In view of the aforesaid notifications by the Central Government, it is clear that the citizens against



whom criminal cases are pending are made exempt from the operation of Section 6(2)(f) provided they produce orders from the concerned Court permitting them to travel abroad subject to the terms and conditions mentioned in the notifications. In other words, an application of passport is not liable to be refused on the ground of pendency of criminal case if the applicant obtains permission from the concerned Criminal Court for travelling outside India. The passport authority, therefore, cannot reject the application for mechanically on the ground of pendency of criminal case against the application. It will be the duty of the passport authority to bring the relevant notification to apply to the concerned Criminal Court for permission to travel abroad. If the applicant obtains such permission from the Criminal Court where his case is pending, the passport authority will be duty bound to issue the passport in terms of the order of the Criminal Court subject to the conditions of the notification. In the present case, the passport authority has failed to bring the relevant notification to the notice of the applicant inspite of the fact that the application was pending before the authority for more than one -and -half years. In fact, it is doubtful whether the passport authority himself was aware of the notification granting exemption to the citizens from the operation of Section 6(2) (f). It is matter of regret that applications are kept pending by the passport authority for such a long time particularly, when it affects the fundamental right of the citizen. At no point of time, the passport authority had informed the Petitioner that he was entitled to passport subject to orders of the Criminal Court. The passport authority has also failed to give information or particulars about the pending criminal case. It is an admitted position that will today the Petitioner is not served with the summons of the pending criminal case. In such a situation, it was all the more necessary for the passport authority to inform the Petitioner of his right to apply to the Criminal Court for permission to travel abroad. In my opinion, it is necessary to issue specific directions to the passport authority in order to ensure that the citizens' application for passport are not unnecessarily delayed on account of pending criminal cases.

Accordingly, it is directed that in all cases covered by Section 6(2) (f), the passport authority shall forthwith inform the applicant about his right to apply to the concerned Criminal Court for permission to travel abroad. In terms of the notification dated 25th August, 1993. In case, the applicant demands a copy of the notification, same shall be supplied by the passport



authority subject to payment of charges. Needless to mention that it will be open for the applicant to approach the Criminal Court, where criminal case against him is pending, for permission to travel out of India. Even if he has not received summons from the Criminal Court, it will be open for the applicant to apply to that Court for a limited purpose of issuing the necessary orders for grant and/or renewal of passport. Considering the fact that the matter involves the fundamental rights of the applicant, the concerned Court shall decide such application as expeditiously as possible and preferably within four weeks from the date of receipt of such application, after notice to the prosecution. In case, the Criminal Court passes an order for issuance of passport, the passport authority shall forthwith issue the passport to the applicant subject to the terms and conditions mentioned in the notification but without making any endorsement on the passport about the pending criminal case."

24. In fact, in the above sated decision in AIR 1997 Bombay 181 was followed by the Gujarat High Court in the decision in the case of Dhiren Baxi .vs. Regional Passport Officer, Ahmedabad reported in AIR 2003 Gujarat 108 and at para 10, among other things, it is held as under:-

"10.....As observed by the Bombay High Court, the passport authority, in future cases of similar nature, may inform the applicants, against whom any criminal case is pending, about the Notification of the Central Government and may inform such applicant that they may approach the concerned and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the passport authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the criminal court permits the Petitioner to go abroad, the passport authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the ground of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the passport authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the Petitioner, in case permission is granted by the Magistrate as indicated above. It is clarified that whether such application should be granted or not is within the jurisdiction of the competent criminal court and it is for the concerned



Magistrate to decide such application, if at all the same is received from the present Petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not expressed any opinion on the aforesaid subject."

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25. At this stage, it is to be pointed out that neither the Passports Act, 1967, nor the Rules, require a passport holder to leave the borders of India.

26. In fact, it is the duty of the Passport authority to bring the relevant notification to the notice of an applicant, so as to enable him to apply before the concerned criminal Court seeking permission to travel abroad.

27. As per Section 10(3) of the Passports Act, 1967, the power conferred on the part of Passport authority to impound a passport is Quasi-Judicial one. Even if it is considered as an administrative power under Section 10(3) of the Passports Act, then, it entitles adverse Civil consequences.

28. In Law, the validity of an order/Judgment is to be based on the reasons stated therein and not by anything else, as per decision of the Hon'ble Supreme Court in **MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER, NEW DELHI** reported in **AIR 1978 SC 851**.

29. It is to be relevantly pointed out that a citizen of a country has a 'Right To Travel', but the same is not an absolute one. Undoubtedly, Section 10(3) (e) of the Passports Act, 1967, gives power to the Passport authority to impound the passport of a person in respect of the offences alleged to have been committed by the holder of passport or travel documents are pending before a criminal court. In such a situation, this Court opines that an opportunity must be provided to the concern individual by the Passport authority to present his case/contradict the view of the Passport authority for impounding a passport. If necessary opportunity is provided to the concerned person, then, it is a fair procedure and in tune with the Article 21 of the Constitution of India and also adhering to the Principles of Natural Justice.

30. As far as the present case is concerned, for the show cause notice, dated 03.09.2015 issued by the first respondent (seeking for submission of explanation by the petitioner for pendency of criminal case, within 15 days from the date of receipt of the letter), the petitioner had submitted his explanation on 30.09.2015, whereby and where under at paragraph No.4, he had stated as under:-

<https://hcservices.ecourts.gov.in/Hcservices/> It is well settled law that mere registration of FIR does not mean that a criminal case is pending



against me within the meaning of Sec.6 and Sec.10 of the Passport Act, 1967. As stated supra, a criminal case is said to be pending only if the Court concerned takes cognisance of the case and summon is served on me. Therefore, till the taking of cognisance and issuance of summons on me, the cases referred in your show cause notice cannot be termed as pendency of criminal proceedings. I herewith enclose the copy of the order of the Hon'ble Madras High Court passed in similar circumstance in W.P.No.25232 of 2014, dated 03.07.2015 for your kind consideration."

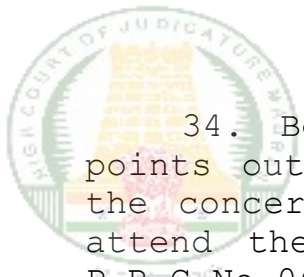
31.Unfortunately, in the present case on hand, the first respondent had not considered the explanation of the petitioner, dated 30.09.2015 at the time of passing the impugned order, dated 25.04.2016, wherein it is among other things, mentioned as follows:-

"You have not surrendered the passport No.H1648563 Dt.31.10.2008 in response to this office letter of even number Dt.11.03.2016. The said passport stands impounded.

Further passport facilities shall be restored after completion of criminal cases pending against you before court of law or with court order permitting you to travel abroad."

32.Be that as it may, in view of the fact that the first respondent/Regional Passport Officer, had not borne in mind the explanation, dated 30.09.2015 submitted by the petitioner at the time of passing the impugned order of impounding the petitioner's passport, this Court is of the considered view that the first respondent had passed the impugned order dated 25.04.2016 in violation of the Principles of Natural Justice embodied in 'Audi Alteram Partem Rule'. Therefore, to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court interferes with the impugned order dated 25.04.2016 passed by the first respondent and sets aside the same. Consequently, the writ petition succeeds.

33.In the result, the writ petition is allowed leaving the parties to bear their own costs. Consequently, the impugned order dated 25.04.2016 passed by the first respondent/Regional Passport Officer, Madurai, is set aside by this Court for the reasons assigned in this writ petition. Liberty is granted to the first respondent to pass fresh orders in the subject matter in issue by passing a reasoned, speaking order on merits, by adverting to the explanation of the petitioner, dated 30.09.2015, by taking note of the notification of the Central Government in G.S.R.No.570 (E), dated 28.05.1993 and in accordance with law (Ofcourse, by ~~providing an opportunity~~ providing an opportunity to the petitioner keeping in mind the Principles of Natural Justice).



34. Before parting with the case, this Court, pertinently points out that in view of the pendency of criminal case before the concerned criminal Court and also that the petitioner is to attend the criminal Court on 15.07.2016 for his appearance in P.R.C.No.06 of 2014, the, this Court deems it fit and proper in directing the petitioner to file necessary Miscellaneous Application before the concerned Judicial Magistrate Court and to seek permission of the said Court to travel abroad. If such a Miscellaneous Petition is filed before Criminal Court, then, the concerned Court is to pass necessary orders imposing necessary conditions. If the petitioner obtains necessary permission from the concerned/competent Criminal Court, where the cases are pending, the First Respondent/Passport Authority is to act in accordance with the said order, ofcourse, subject to the notification of the Central Government, as the case may be. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai - 625 002.

2.The Superintendent of Police,
Madurai District,
Madurai - 625 001.

+1cc to MR.C.Arul Vadivel @ Sekar, Advocate SR.NO.35859
+1cc to Special Government Pleader SR.NO.36361

rj2

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ORDER MADE IN
W.P. (MD) No.9954 of 2016
12.07.2016