

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.5846 of 2018

and

WMP.No.7183 of 2018

M.Ramachandar Singh

... Petitioner

Vs.

1.State rep. by

Inspector of Police,

CBI/SCB/Chennai

Rajaji Bhawan, Besant Nagar,

Chennai - 600 090.

2.The Regional Passport Officer,

Regional Passport Office,

Rayala Towers 2 & 3, IV Floor

New No.158, Anna Salai,

Chennai - 2.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in F.No.1800004-CPC-MAS, MA1070791503517 dated 05.03.2018 and quash the order issued by the second respondent and direct the 2nd respondent to renew the petitioner's passport vide application File No:MA1070791503517 dated 18.12.2017 and issue a passport with a validity of 10 years.

For Petitioner : Mr.P.Solomon Francis

For R1 : Mr.K.Srinivasan

For R2 : Mr.N.Ramesh

O R D E R

This writ petition has been filed to quash the order dated 05.03.2018 passed by the second respondent and consequently, direct the second respondent to renew the petitioner's passport vide File No.MA1070791503517 dated 18.12.2017, for a period of 10 years.

2.It is the case of the petitioner that he is one of the Directors of a company viz., M/s.JR Smelters Pvt. Ltd. Pursuant to the FIR in RC.9(S)/2009/CBI/SCB/Chennai, the first respondent has conducted search at the office and residential premises of

the petitioner on 20.11.2009 and seized certain documents, including the passport of the petitioner as well as his family members and also other Directors of the company. As a result of the same, the petitioner was arrested, however, was enlarged on bail, vide order dated 11.08.2010 in CrI.OP No.18492 of 2010. Subsequently, he preferred CMP.No.3431 of 2010 for return of the passport before the Principal Judge for CBI Cases, Chennai, which was dismissed, vide order dated 23.06.2010. Aggrieved against the same, he filed CrI.RP.No.1037 of 2010, which was disposed of, by this Court, by directing the trial Court to return the passport to the petitioner, subject to certain conditions. Pursuant to the same, the trial Court returned the passport to the petitioner after filing an affidavit of undertaking.

3.It is the further case of the petitioner that since the validity of the passport was to expire, he approached the second respondent to renew his passport, which was rejected. Challenging the same, he preferred WP.No.11525/2011, which, by order dated 11.07.2011, was disposed of, directing the second respondent to consider the petitioner's renewal application within a period of four weeks. Pursuant to the same, the second respondent renewed the petitioner's passport bearing No.K2234428, which is valid upto 2022. Due to flood at Chennai, the passport of the petitioner was damaged and hence, he approached the second respondent for issuance of a fresh passport, which was issued, however, only for a period of one year, as per the order dated 26.10.2016 in WP.No.29359/2016. Since the said passport got expired, the petitioner again approached the second respondent for issuance of a fresh passport, on 18.12.2017 vide File No.MA1070791503517, which was not considered due to pendency of the criminal case. By the order impugned herein dated 05.03.2018, the second respondent advised the petitioner to obtain order from the criminal Court in this regard. Challenging the same, the petitioner is before this Court.

4.Upon notice, the second respondent filed a detailed counter affidavit, wherein, in para 12, it has been averred as follows:

"It is submitted that taking note of the adverse report of the Superintendent of Police, CBI, SCB, Chennai, and in terms of provisions of Section 6(2)(f) of the Passports Act, 1967 and exemption clause vide Gazette notification No.G.S.R.No.570(E), this office issued order vide reference No.1800004-CPC-MAS dated 5.3.2018 advising petitioner to obtain permission of the concerned trial court to travel abroad in order to enable this office process his passport application."

5.The learned counsel for the petitioner submitted that though the second respondent had renewed the passport of the petitioner on two occasions during the pendency of the criminal case against him, not considered the present application citing the reason of pendency of the very same criminal case. The learned counsel further submitted that since the second respondent is renewing the passport only for a period of one year, it causes hardship to the petitioner for the reason that for every renewal, he was called upon to approach the Court and get appropriate orders for the same and that the petitioner has to travel abroad frequently for his business activities and hence, the second respondent be directed to renew the passport for a period of ten years. In support of this submission, he placed reliance on the following decisions:

(i) In 2016 SCC Online Bom 9026 [Ramesh S.Taurani v. State of Maharashtra and another], the Division Bench of Bombay High Court has held as follows:

"7.We would deal with the request made by applicant on merits. Considering the past record wherein this Court had passed orders from time to time permitting petitioner to travel abroad, we find it appropriate to consider the request made by the petitioner for renewal of passport. The respondents have not placed any adverse material on record so as to deny relief to the applicant. The question is for what period the passport is to be renewed. Notification dated 25th August, 1993 issued by the Ministry of External Affairs in exercise of the powers conferred by Clause (a) of Section 22 of the Passport Act, 1967 stipulates that the Court would specify a period for which the passport has to be issued. In the facts at this stage, the passport could be renewed for substantial period.

8.We are of the view that applicant's request for renewal of passport for a period of ten years deserves consideration.

ORDER

(i) On applicant filing an application for renewal of passport, respondents are directed to renew the passport for a period of ten years.

(ii) Application is disposed of accordingly."

(ii) This Court, vide order dated 13.06.2017 in WP.No.3699 of 2017 [Ashok Muthana v. Regional Passport Officer, Chennai and others], disposed of the said writ petition in the following lines:

"Accordingly, I direct the respondent to renew the petitioner's passport bearing No.W-3451425 for a period of ten years pursuant to the petitioner's application bearing No.16-1009674521 dated 19.11.2016 pending on the file of the respondent in File No.MA1079776896316 dated 22.11.2016 and return the passport to the petitioner within two weeks from the date of receipt of a copy of this order. On renewal of the passport, I direct the petitioner to surrender the same before the XI Metropolitan Magistrate, Saidapet, Chennai within one week from the date of renewal. In the event of the petitioner travelling abroad, the petitioner should file appropriate applications before the Criminal Courts where the criminal cases are pending against him for permission to travel abroad. The petitioner shall also file application before the XI Metropolitan Magistrate for return of the passport for travelling abroad. In the event of such applications being filed by the petitioner before the concerned Criminal Courts, the trial courts are directed to decide the same on merits and in accordance with law.

With these observations, the writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed."

Thus, learned counsel prayed for a similar direction in this writ petition as well.

6. Heard the learned Standing Counsel appearing for the second respondent, who, on instructions, submitted that the claim of the petitioner seeking issuance of passport, would be considered, by the second respondent, only for a period of one year.

7. Admittedly, the petitioner is having a passport, which is valid upto 2022 and the criminal case pending against him is at trial stage before the Additional Chief Metropolitan Magistrate, Egmore.

8. It is well settled proposition that mere registration of the criminal cases is not a bar for denying the passport and mere pendency of the criminal cases would not operate as a bar or to process the application for renewal of passport.

9. In this writ petition, the petitioner claimed renewal of his passport for a validity of ten years. To substantiate his claim, he relied on two decisions, wherein, the respondents

therein were directed to renew the passport for a period of ten years. However, the learned Standing counsel appearing for the second respondent, on instructions, submitted that there is no impediment for the second respondent to consider the claim of the petitioner only for a period of one year.

10. In view of the aforesaid facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also in the light of the legal proposition, this Court is of the view that the criminal case pending against the petitioner has no link or nexus on him going abroad. Hence, this Court is inclined to issue appropriate direction to the second respondent.

11. Accordingly, the second respondent is directed to consider the petitioner's application and pass appropriate orders, with regard to renewal of his passport, vide application File No. MA1070791503517 dated 18.12.2017, within a period of two weeks from the date of receipt of a copy of this order.

12. This writ petition stands disposed of, with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police, CBI/SCB/Chennai
Rajaji Bhawan, Besant Nagar, Chennai - 600 090.

2. The Regional Passport Officer,
Regional Passport Office, Rayala Towers 2 & 3, IV Floor
New No.158, Anna Salai, Chennai - 2.

+1cc to Mr. P. Solomon Francis, Advocate, S.R.No.74072

+1cc to Mr. N. Ramesh, Advocate, S.R.No.74444

W.P.No.5846 of 2018

rrs 12/11/2018