



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.10431 of 2018

A.Sivakumar

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bhartathi Ula Street,
Race Course Road,
Madurai 625 002.

2.The Superintending Enquiry Officer
The Regional Passport Office
Bharathi Ula Road
Race Course Road
Madurai- 625 002.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider Petitioner's application for issuance of passport in application No.MD1060214654917.

For Petitioner : Mr.G.Pandirajan

For Respondents : Mr.G.Rajarajan
Standing Counsel

ORDER

The petitioner's application which was taken on file by the first respondent herein in MD-1060214654917, dated 20.06.2017 which is still pending. Hence the present writ petition has been filed.

2.This Court had an occasion to deal with the status of a person involved in a criminal offence for being considered for issuance of passport in W.P(MD)No.20335 of 2016, dated 19.04.2018. The relevant portion of the said order is as follows:

"8.Before dealing with the facts of the petitioner's case, it would be appropriate to have a glance at the legal position in a case of this nature. Section 10 (3) (e) of the Indian Passports Act, 1967 reads as follows:



"10.Variation, impounding and revocation of passports and travel documents:-

(1).....

(2)....

(3)The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a)....

(e)if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India."

9.The word 'may impound' empowering a passport authority to impound or cause to impound or revoke the passport is apparently directory in nature and not mandatory.

10.The Ministry of External Affairs by a notification in GSR 570 dated 25.08.1993 had diluted the scope of Section 10(3) (e) of the Indian Passports Act, 1967 by exempting the persons against whom criminal proceedings are pending and who produce orders from the Court thereby permitting them to depart from the country with certain conditions. For the sake of clarity, the said notification is extracted hereunder:-

"Ministry of External Affairs Notification

New Delhi, the 25th August, 1993

G.S.R.570 (E):-In exercise of the powers conferred by clause (1) of Section 22 of the Passports Act 1967 (15 of 1967) and in suppression of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated 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 sub-section (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



will not be an absolute embargo for a person to leave the country or otherwise be disentitled for issuance of passport.

13. Yet another aspect that could be relevant in the circumstances of the present case, is the status of a person being accused or charged for criminal offences. One of the cardinal principles of criminal jurisprudence is the principle of presumption of innocence. The general principle is that a person accused of a criminal offence is presumed to be innocent until he is proved to be guilty has been reiterated in various judgments of the Apex court as well as the High Courts. The right of a person to move in and out of the country is a personal liberty protected under Article 21 of the Constitution of India. The requirement of natural justice is implicit in Article 21. While a person's personal liberty is protected under the Constitution of India, when such a person is yet to be proved guilty of a criminal offence, the passport authorities deriving their powers under Section 10(3)(e) of the Indian Passports Act, 1967, which is only directory in nature may not be justified in arbitrarily invoking the provision for impounding or attempting to impound or revoking the passport on the ground that the criminal case is pending.

14. In the light of the above observations, it can only be concluded that the respondent's action in creating an embargo to the personal liberty of the petitioner to move in and out of the country, is arbitrary.

3. In view of the said proposition laid down by this Court, the first respondent herein is directed to issue passport to the petitioner, within two weeks from the date of receipt of this order.

4. With the above observation, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To:

1. The Regional Passport Officer,
Regional Passport Office,
Bhartathi Ula Street,
Race Course Road,
Madurai 625 002.



2.The Superintending Enquiry Officer
The Regional Passport Office
Bharathi Ula Road
Race Course Road
Madurai- 625 002.

+1CC to Mr.G.Pandiarajan Advocate in SR.No.64633.
+1CC to Mr.G.Rajaraman Advocate in SR.No.64604.

RMI

DS/SV/MMS/SAR-1 :25.06.2018: 5P/5C

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