



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 24.07.2018

**CORAM**

WEB COPY

**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

W.P.(MD) No.16114 of 2018 and  
W.M.P.(MD)No.14361 of 2018

J.Senthilkumar

... Petitioner

**vs.**

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

... Respondent

**PRAYER** : Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling the impugned Surrender Certificate File No.MD 1071281978318, dated 04.07.2018 of the Respondent and to quash the same and consequently direct the respondent to return back the petitioner's passport bearing No.Z4627913, dated 22.06.2018.

For Petitioner : Mr.S.R.A.Ramachandran

For Respondent : Mr.V.Kathirvelan,

Assistant Solicitor General of India  
Assisted by S.Ragaventhre  
Central Government Standing Counsel

**O R D E R**

By the impugned order dated 04.07.2018, the respondent herein had rejected the petitioner's application in file No.MD1071281978318 on the ground that the Inspector of Police, Nilakkottai, Dindigul District has submitted an adverse police verification report against the petitioner for his involvement in Crime No.87 of 2018 which is now pending trial in S.T.C.No.13 of 2018 on the file of the learned Judicial Magistrate, Nilakkottai, Dindigul District.

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 25<sup>th</sup> 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 14<sup>th</sup> 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 6of 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

(ii)if no period either for the issue of the  
passport or for the travel abroad is specified in such  
order, the passport shall be issued for a period of one

(iii)if such order gives permission to travel



abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(c) any passport issued in terms of (a) (I) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

11. The aforesaid notification came to be further clarified through a circular issued by the Ministry of External Affairs, dated 21.08.2014, insofar it relates to the issuance of passports to an applicant against whom proceedings are pending before a Criminal Court. As per the said circular, the passport authorities were directed to process the applications for issuance of passport after obtaining an undertaking together with a letter directing them to fulfil the requirements prescribed in the gazette notification dated 25.08.1993.

12. In the light of the notification dated 25.08.1993 and the subsequent circular dated 21.08.2014 read with Section 10(3) (e) of the Indian Passports Act, 1967, it can only be concluded that the scope for denying permission to issue a passport or initiate steps to impound is narrowed down to the effect that such persons may be permitted to leave the country on fulfilment of certain requirements. On a cogent reading of the gazette notification along with Section 10(3) (e) of the Indian Passports Act, 1967, it can only be held that the provisions of the Indian Passports Act 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 who is 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 the result, the impugned proceedings of the respondent in Surrender Certificate File No. MD1071281978318, dated 04.07.2018 is quashed. Consequently, the respondent is directed to return back the petitioner's passport bearing No. Z4627913, dated 22.06.2018, within two weeks from the date of receipt of this order.

4. With the above observation, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

**To:**

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

+ 1 CC TO Mr.S.RAGAVENTHRE, ADVOCATE IN SR No. 75031  
+ 1 CC TO Mr.S.R.A.RAMACHANDRAN, ADVOCATE IN SR No. 74648

RMI

TE/RP/SAR-4 : 07/08/2018 : 4P/4C

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