



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.22677 of 2017

Darvin

... Petitioner

Vs.

1. The Regional Passport Officer
Regional Passport Office
Madurai.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(R2 is impleaded vide Court Order
dt.04.06.2018 in W.M.P.No.19940 of 2018
in WP (MD) No.22677/17)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to renew the passport of the petitioner which is pending in file number MD 2077334677513 on the file of the respondent based on petitioner's representation dated 22.11.2017 and issue the same to the petitioner.

For Petitioner : Mr.N.Mohideen Basha

For Respondent

No.1 : Mr.P.Subbiah

No.2 : Mr.J.Gunaseelan Muthiah

Additional Government Pleader

ORDER

The petitioner has come forward with the present petition seeking for a writ of Mandamus directing the respondent to renew his passport which is pending in file number MD 2077334677513 on the file of the respondent based on his representation dated 22.11.2017 and issue the same to him.

2. Though the petitioner has approached the respondent on every occasions, seeking for renewal of passport, it has not been done so far on the ground of pendency of criminal case in CC.No.58 of 2014 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District. In the above circumstances, the petitioner is before this Court with the present petition seeking



for relief as stated supra.

3. The facts of the case is that the petitioner is having a valid passport issued by the respondent, which was issued in the year 2003 for a period of 10 years. He has made an application for renewal of passport in the year 2013 and the same was pending in passport application no.MD2077334677513 for the past four years.

4. 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

(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 year,

(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.

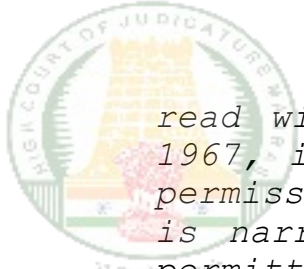
(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

(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 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.

5. It is further seen that the proceedings in C.C.No.58 of 2014 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai in which the petitioner has been arrayed as an accused has been challenged before this Court in CrI.O.P.(MD)No.17488 of 2014 and by an order dated 29.04.2015, this Court had stayed the proceedings which is said to be still in force. While that being so, quoting the pendency of the criminal case which has been stayed by this Court is another illegality and the respondent is not justified in relying upon the same, particularly, when the petitioner claims to have brought to the notice of the respondent about the interim order granted by this Court.



6. In view of the above, the writ petition is disposed of with a direction to the first respondent to issue passport to the petitioner, within two weeks from the date of receipt of this order. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Passport Officer
Regional Passport Office
Madurai.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

+ 1 cc TO Mr.P.Subbiah , Advocate in SR No. 66650
+ 1 cc TO Mr.N.Mohideen Basha , Advocate in SR No.66605
+ 1 cc TO The Special Government Pleader in SR No. 66809

aav

AE/SV MMS/SAR4/20.06.2018/5P/6C

W.P (MD) No.22677 of 2017
04.06.2018