

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.P.No.2137 of 2019 and
W.M.P.Nos.2393 & 2394 of 2019

M.Rajaboopathi

... Petitioner

/Vs/

1. The Superintendent of Police,
Western Range, Directorate of Vigilance and Anti Corruption,
293, M.K.N. Road, Alanthur, Chennai - 16.
2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Salem - 4.
3. The Regional Passport Officer, Regional Passport Office,
Municipal Water Tank Building,
W.B.Road, Tiruchirapalli - 620 008.
4. The Chief Immigration Officer, K.K.Nagar,
Chennai.

... Respondents

(R-4 Suo Motu impleaded vide order dated 21.03.2019,
made in W.P.No.2137 of 2019 by this Court)

PRAYER: This Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order, dated 07.01.2019 passed by the 1st respondent, to quash the same and consequently, to forbear the respondents from interfering with the petitioner's personal liberty of going abroad with the help of Passport bearing No.J4331691, under the guise of insisting No Objection Certificate (NOC).

For Petitioner : Mr.N.Manokaran

For R-1 & R-2 : Mr.K.Prabakar, APP

For R-3 & R-4 : Dr.G.Babu, CGSC

ORDER

This writ petition has been filed, to call for the records, relating to the order dated, 07.01.2019, passed by the first respondent and to quash the same and consequently, to

direct the respondents from interfering with the petitioner going abroad, with the help of his passport, bearing No.J4331691, under the guise of insisting No Objection Certificate from the Respondents 1 and 2.

2. The Petitioner submits that he is a resident of Karuvakurichi Village and his father passed away in the year 2016 and his widowed mother is taking care of small landholdings and eking her livelihood. He had completed the UG Degree in B.Sc.,Physics in the Government Arts College, Mannargudi, and got admission in Post Graduate in M.Sc., Physics at Periyar University, Salem, where he secured 81.2% with distinction. Thereafter, he had completed his Bachelor of Education in Sri Ramakrishna Mission Vidyalaya College of Education, Coimbatore in the year 2007 - 2008. Thereafter, deciding to pursue his career in Physics he had joined in a research programme (Ph.D) in Periyar University in the year 2009 under the guidance of Prof.Dr.V.Krihsnakumar.

3. During his tenure as a research fellow he had been maintaining unblemished record in performance of his research work and he obeyed the directions, instructions and assignments given by his Guide Prof.Dr.V.Krishnakumar. After obtaining Ph.D, the petitioner pursued his Post Doctoral studies in Shandong University, China and took up the research task and the Post Doctorate Program in Material Science and Engineering Discipline. After successfully completion of his studies in China, he came back to India on 20.06.2018 and on his arrival, he was informed by the Immigration Officer that he cannot travel abroad, in view of the pendency of a case in FIR No.03/AC/2014 and that he can travel abroad only if the first respondent gives No Objection Certificate for his travel abroad. On enquiry he came to know that the second respondent registered a case in FIR No.3/AC/2014, dated 21.03.2014 against his Guide Dr.V.Krishnakumar, for the alleged offences under Sections 406, 409, 465, 468, 471, 477A IPC r/w Sec.13(2) r/w 13 (1)(C) of the Prevention of Corruption Act, 1988, for having misappropriated Government Money by submitting bogus bills for the stationary items purchased from non existing stationary shops and that the petitioner and some other persons who had done research under him were also added as accused in the case stated to have abetted him.

4. The Petitioner, immediately after coming to know about the First Information Report had approached the second respondent and enquired about the First Information Report, but he was not given any further details about the case. Meanwhile, the Petitioner and the other research scholars and colleagues, who were doing research under the guidance of the Prof.Dr.V.Krishnakumar were summoned for enquiry by the

respondents and they appeared for enquiry and gave statement in the course of the investigation. During the enquiry, the petitioner had informed the 2nd respondent that his Guide used to instruct him and other research scholars to make entries in the stock register as per the details found in the bills and the petitioner had no occasion to verify the materials supplied with that of the entries made in the bills.

5. The Petitioner would further submit that he had no knowledge about the acts allegedly stated to have been committed by his Guide Prof.Dr.V.Krishnakumar and he cannot be penalized or made to suffer for the acts of his guide. Meanwhile, the petitioner got opportunities for continuing research in his field for betterment of his career and since the Passport Authorities had informed him that he cannot be allowed to travel abroad without the No Objection Certificate and clearance from the respondents he had approached the 1st respondent by representation dated 19.07.2018 seeking to issue No Objection Certificate, in respect of his Passport No.J4331691 to go abroad. Since the representation was not considered, he had earlier filed a Writ Petition in WP.No.19285 of 2018 and this Court, by order dated, 02.11.2018, had directed the 1st Respondent to consider the representation of the Petitioner, dated 19.07.2018, after verifying the documents, in accordance with law. Thereafter, the Petitioner had submitted a representation dated 13.11.2018, requesting the first respondent to consider his grievance and, the petitioner was summoned and he appeared before the first respondent on 19.12.2018. The Petitioner was asked to submit his statement in writing and accordingly, he had also given his explanation. While so, by communication, dated 07.01.2019 (Impugned Order) the first respondent, has rejected his representation dated 19.7.2018 to issue No Objection Certificate stating that the prosecution was recommended against the petitioner and others and that on receipt of sanction order, the charge sheet will be filed against him and the other accused. Since, the case is only in the stage of FIR and the petitioner has approached this Court.

6. The learned counsel for the Petitioner, while challenging the impugned order would submit that as on date, the case is only in the FIR stage and that the petitioner had co-operated with the respondents during the enquiry. The order refusing to issue No Objection Certificate to go to abroad at the stage of FIR cannot be sustained since it is without any authority of law and that it will seriously cause prejudice to the rights of the petitioner to pursue his further studies and for the betterment of his career and prospects. He would further submit that the freedom of movement is a highly cherished right guaranteed under the Constitution of India essential for everyone citizen's own future and for the growth and development

of human personality and that the right to travel abroad cannot be curtailed by the respondents at the stage of pendency of FIR, unless the power under Section 10(3) of the Passport Act is invoked by the appropriate Authority namely the third respondent in accordance with law by following proper procedure.

7. He would further submit that the petitioner has been recently selected by the European Commission to conduct his OMERCY research work at the School of Chemical Engineering, Department of Chemical and Metallurgical Engineering, Aalto University at Finland under the supervision of Associate Prof. Marjatta Louhi Kultanen under the funding support of Marie Sklodowska Curie Individual Fellowship and his research period is for two years. He would further submit that if the impugned order is not set aside and the petitioner is not permitted to travel abroad, it will cause serious prejudice to him.

8. The learned counsel for the Petitioner would rely on the decisions rendered by this Court in B.Ranganathan Vs.The Regional Passport Officer, Government of India, reported in 2016 (1) CWC 656 and W.Jaihar William Vs.State of Tamil Nadu reported in 2014 (2) CWC 684 for the proposition that mere pendency of the First Information Report is not a bar for issuance of Passport and that unless that Court concerned takes cognizance of the offence, on filing of the charge sheet, on completing of the investigation, against the accused, it cannot be construed that proceedings are pending before the Court. He would further submit that the 3rd respondent ought to have exercised his independent mind and at the stage of FIR should not have asked for No Objection Certificate from the Police. Hence, the Petitioner being left with no other remedy had approached this Court under Section 226 of the Constitution of India, seeking for direction to quash the impugned order dated 07.01.2019 and seeking for a direction to the respondents to issue No objection Certificate to enable the petitioner to use his Passport to travel abroad.

9. A detailed counter has been filed by the Respondents 1 and 2, contending that the petitioner is arrayed as accused in Crime No.3/AC/2014 and the First Information Report has been registered by the second respondent for the serious offences punishable under Sections 120(B), 409 r/w 109 IPC, 420 r/w 109 IPC, 465, 468, 182 r/w 109 IPC 471 r/w 109 IPC, 477(A) r/w 109 IPC and under Section 13(2) r/w 13(1) (C) of Prevention of Corruption Act 1988 r/w 109 IPC and the FIR is pending on the file of the learned Special Judge for Cases under the Prevention of Corruption Act, Salem. It has been further stated that the petitioner had entered into a criminal conspiracy with the main accused and committed the offence of forgery and there are prima facie materials available against the Petitioner for having

committed the grave crime of forgery and fabrication of records in entering into a criminal conspiracy and having actively assisted and aided the other accused. It has been further stated that the investigation has already been completed and it is at the stage of awaiting proper sanction and in such circumstances it cannot be construed as pending at the stage of First Information Report and that once sanction is obtained cognizance of the alleged offences against the Petitioner will be taken up by the Court concerned. Further, based on the request of the 2nd respondent a Look Out Circular had been opened by Bureau of Immigration, Ministry of Home Affairs vide Ref.No.1/SIC/ACK/LOK/2018-5097.

10. The learned Additional Public Prosecutor appearing for the 1 and 2 respondents would submit that the investigation has been completed in all aspects and that the respondents are awaiting receipt of sanction orders for prosecution in respect of certain accused and that once the sanction is received the final report will be filed before the concerned Court and that there is likelihood of the Court taking cognizance immediately on the final report being filed. He would vehemently oppose for issuance of No Objection Certificate to the petitioner stating that if the petitioner is allowed to travel abroad there is every possibility that he may abscond and not come back to India thereby, jeopardizing the progress of trial and he would also submit that based on the letter of the 2nd respondent Memo No.47/2014/EDN/SL and circular No.1/SIOC/ACK/LOC/2018-5097 dated 08.05.2018 regarding opening of Look Out Circular in respect of the petitioner has been issued by the Bureau of Immigration preventing the petitioner from leaving the Country.

11. In view of the above submissions, this Court by earlier order dated 21.03.2019 Suo Motu impleaded the 4th respondent.

12. The 3rd respondent had filed a counter stating that the petitioner had applied for issuance of a Passport with the Office of the 3rd respondent vide file No.TR2061340811211 dated 02.12.2011 and that in accordance with the prevailing statutory proceedings a Passport bearing No.J4331691 dated 31.01.2012 had been issued based on the earlier recommendation and Police verification from the Superintendent of Police Salem and Tiruvarur Districts. While so, they have received a letter dated 20.04.2018 from the 2nd respondent stating that the case has been registered against the petitioner and that the charge sheet was likely to be filed and thereby, a request was made by the Police for impounding the Passport of the petitioner. It had been further stated that an explanation was sought for from the petitioner regarding the communication from the 2nd respondent

and that they have also received an explanation from the petitioner through E-mail dated 26.12.2018.

13. Dr.G.Babu, the learned standing counsel appearing for the 3rd and 4th respondents would submit that the requirement of a No Objection Certificate is necessary for issuance of a Passport and based on the request of the 2nd respondent dated 20.04.2018 stating that the petitioner is involved in a criminal case and that the charge sheet was likely to be filed, the 3rd respondent had sought for an explanation from the petitioner and that he had submitted his explanation by E-Mail dated 26.12.2018. He would further submit that based on the request of the 2nd respondent, the Look Out Circular has been initiated by the Bureau of Immigration in Circular No.1/SIC/ACK/LOK/2018-5097 and letter Memo No.47/2014/EDN/SL dated 14.05.2018. He would further submit that only based on the request of the 2nd respondent steps have been taken by the 3rd and 4th respondents and that if the 2nd respondent issues No Objection Certificate, the 3rd respondent has No Objection in validating the Passport and the 4th respondent can permit the petitioner to travel abroad lifting the embargo to travel abroad, if a request is made by the 2nd respondent to withdraw the Look Out Circular.

14. At this juncture, the learned counsel for the petitioner/accused would submit that in order to protect the interest of the 1st and 2nd respondents, the petitioner/accused has also filed an affidavit of undertaking stating that he is ready to abide by any conditions that may be imposed by this Court. He would further submit that despite the cognizance having not been taken by the concerned Court, the petitioner is also prepared to appear before the concerned Court and furnish sureties and details about his travel and place of stay so as to enable the Trial Court to reach him for service of summons and other process once the cognizance is taken by the Court. He would also submit that the petitioner undertakes to strictly abide by the undertaking filed before this Court and that he is also prepared to furnish details disclosing his itinerary and place of stay and all other requirements to satisfy the Court as well as the respondents 1 and 2 to ensure the progress of trial. He would also submit that the mother of the petitioner/accused would stand as a surety to him.

15. This Court in the decision rendered in the case of W.Jaihar William Vs.State of Tamil Nadu reported in 2014 (2) CWC 684 has held as follows:-

"8.....It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of Criminal proceedings in respect of the offences alleged to have been committed by the Applicant before the Criminal Court.

Only after the Court takes cognizance of the offence alleged to have been committed by the Appellant, as stipulated under Section 190 of Cr.P.C., it can be construed as "proceedings pending before the Court".

16. The case is in the FIR stage. The final report is not made ready for want of sanction from the competent Authority. Mere pendency of the FIR cannot be construed as "Proceedings" pending before Court and at this stage the petitioner cannot be prevented from traveling abroad.

17. Taking into consideration the peculiar facts and circumstances of this case, the plight and future of a research scholar, who has come up in his life and also considering the undertaking of the petitioner that despite cognizance being not taken by the concerned Court, he is prepared to subject/commit himself before the concerned Court by furnishing sureties, this Court is of the opinion that the impugned order dated 07.01.2019 has to be set aside and the petitioner be permitted to travel abroad.

18. In view of the above, the impugned order dated 07.01.2019, is set aside and consequently, the 1st and 2nd respondents are directed to issue No Objection Certificate, regarding the Passport of the petitioner and also to issue a request for withdrawal of Look Out Circular issued by the 4th respondent within a period of two weeks from the date of receipt of a copy of this order.

(i) Further, the petitioner/accused shall appear before the learned Special Judge, for cases under the Prevention of Corruption Act, Salem within a period of one week from the date of receipt of a copy of this order and execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the Trial Court, (out of the two sureties, one shall be the mother of the petitioner) and

(ii) the petitioner/accused shall furnish his E-mail and his local contact details, so as to enable the Trial Court to serve summons on him through E-mail. Further, the petitioner shall file an undertaking before the concerned Court that his authorized representative shall receive the summons on his behalf.

- It is made clear that the petitioner shall strictly abide by the undertaking given by him before this Court regarding progress of trial and in the event of his failure to abide by the undertaking given in the affidavit, the respondents shall take appropriate steps

in accordance with law.

- This order is passed only taking into consideration the peculiar circumstances of this case and it cannot be used for reliance in any other case.
- In view of the above, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kv/ssi

To

1. The Special Judge, for case under the Prevention of Corruption Act, Salem.
2. The Superintendent of Police,
Western Range, Directorate of Vigilance and Anti Corruption,
293, M.K.N. Road, Alanthur, Chennai - 16.
3. The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Salem - 4.
4. The Regional Passport Officer, Regional Passport Office,
Municipal Water Tank Building,
W.B.Road, Tiruchirapalli - 620 008.
5. The Chief Immigration Officer, K.K.Nagar,
Chennai.
6. The Public Prosecutor,
High Court of Madras.

+2ccs to Mr.G.Babu, Advocate SR.No.28756

+1cc to Mr.N.Manokaran, Advocate SR.No.29376

W.P.No.2137 of 2019 and
W.M.P.Nos.2393 & 2394 of 2019

NRL (CO)
GMY (11/04/2019)