

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2471 of 2019

Aravinth Ramalingam

... Petitioner

Vs.

1.The FRRO- Foreigners Regional Registration Office,
No.26, Shasthri Bhavan - Annexe Building,
Haddows Road, Nungambakkam,
Chennai - 600 006

2.Deputy Passport Officer,
Regional Passport Office,
Royala Towers,
No.2 and No.3, IVth Floor,
Old No.785, New No.158,
Anna Salai, Chennai - 600 002

3.The Inspector of Police,
Team-VII, Fake Passport Wing,
Central Crime Branch,
No.132, Commissioner of Police Office Building,
Vepery, Chennai - 600 007

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider the petitioner representation dated 04.01.2019 and thereby direct the respondents to grant permission to travel back to Srilanka as a Srilankan citizen and on the basis of Srilankan Passport and in future freely travel between Srilanka and India for the purpose of seeing My Children, My parents and also My job opportunities and also to attend the case initiated by the Regional Passport Office, Chennai.

For Petitioner : Mr.D.Vijayababu

For RR1 & 2 : Mr.Venkataswamy Babu,
Senior Panel Counsel

For RR3 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This writ petition has been filed for direction directing the respondents to consider the petitioner's representation dated 04.01.2019 to grant permission to travel back to Sri Lanka under the Srilankan passport for the purpose of visiting his family members.

2. Mr.D.Vijayababu, the learned counsel for the petitioner submitted that the petitioner was born in Srilanka on 11.12.1976 and the petitioner along with his family members came to India on the basis of the petitioner's mother's Srilankan passport. He completed his school studies at Chennai and also completed his college studies at Chennai at the Hindustan College of Engineering, Kelambakkam, Chennai. He obtained passport mentioning his birth place as Trichy from the Regional Passport Office, Chennai. Thereafter he went to Srilanka on the basis of Indian passport on tourist visa. He converted the same into work visa and resident permit and in the year 2004, he obtained Srilankan passport and subsequently renewed his Srilankan passport. He married a Srilankan woman and gave birth to two children. There was a family dispute between the petitioner and his wife and as such while the petitioner was arriving at Chennai Airport, the immigration officials stopped him and confiscated the petitioner's Srilankan passport and Overseas Citizenship of India card.

3. The learned counsel for the petitioner further submitted that the case has been registered against the petitioner in Crime No.322 of 2018 for the offence under Sections 12(1A) (a) of Passports Act, 1967 and Section 420 I.P.C. He was also granted anticipatory bail by this Court and the conditions imposed by this Court were also duly complied with by the petitioner. When the petitioner proposed to travel back to Colombo he was not permitted by the immigration officials to travel to Colombo. Therefore he submitted representation and it is pending. Further he submitted that the petitioner's Indian Passport issued on 24.10.1997 was already expired even as early as on 23.10.2017 itself. Due to family dispute, the wife destroyed the same in Srilanka itself. Therefore he could not surrender the Indian passport before the first respondent. Further the learned counsel for the petitioner relied upon the following judgments:

(i) In the case of E.V.Perumal Samy Reddy and Others Vs. State rep. by the Deputy Commissioner of Police, Ambattur Range, Chennai and Another reported in 2014 (1) MLJ (Criminal) 125.

(ii) In the case of Srichand P.Hinduja Vs. State Through C.B.I., New Delhi reported in 2002 AIR (SC) 401.

and (iii) in the case of Premkumar Thangadurai and another Vs. State the Inspector of Police, Central Crime Branch, Team II, Veperi, Chennai passed by this Court in CrI.R.C.No.31 of 2018 dated 11.01.2018.

4. Per contra, Mr.Venkataswamy Babu, Senior Panel Counsel appearing for the first and second respondents submitted that the petitioner obtained Indian passport dated 24.10.1997. He used to travel on the Indian Passport to Srilanka between 2001 and 2004. In 2004 he got a job with HSBC Bank, Colombo as Assistant Manager with the help of his original Srilankan birth certificate and also he obtained Srilankan passport on 29.06.2004. Simultaneously he was holding both the passports. Subsequently, he also obtained Overseas Citizenship of India card on 21.11.2006 on the basis of his grandfather's Indian origin. When the petitioner arrived at Chennai on 31.12.2017 his passport was seized and the case has been registered in Crime No.322 of 2018 for the offence under Sections 12(1A) (a) of Passports Act, 1967 and Section 420 I.P.C. Therefore, he committed very serious offence and he further submitted that if the petitioner is allowed to travel to Colombo he will not return back to attend the trial. Therefore, he vehemently opposed the writ petition.

5. Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing on behalf of the third respondent submitted that the case has been registered in Crime No.322 of 2018 for the offence under Sections 12(1A) (a) of Passports Act, 1967 and Section 420 I.P.C. on the allegation that the petitioner is holding two passports simultaneously and he travelled on Indian passport between India and Srilanka between the years 2001 and 2004 and also obtained Srilankan passport. Therefore, he committed offence under the Passports Act. Therefore, he vehemently opposed this writ petition.

6. Heard, Mr.D.Vijayababu, the learned counsel for the petitioner, Mr.Venkataswamy Babu, Senior Panel Counsel appearing for the first and second respondents and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing on behalf of the third respondent.

7. It is seen that the petitioner's passport was seized in Chennai Airport on the ground that he was possessing two passports namely Indian Passport as well as Srilankan Passport. Thereafter he was granted anticipatory bail and he also duly complied with the conditions imposed by this Court.

The allegation is that the petitioner came to India during his childhood and he completed his studies in Chennai. Thereafter he married a Srilankan citizen and also obtained Srilankan passport. It is also seen that his Indian passport expired on 23.10.2017 and it seems that on the dispute between the petitioner and his wife it was destroyed in Srilanka. Therefore, the case has been registered in Crime No.322 of 2018 for the offence under Sections 12(1A) (a) of Passports Act, 1967 and Section 420 I.P.C. Admittedly, there is a family dispute between the petitioner and his wife and his children are in Srilanka. The investigation is also pending. At this stage, the petitioner seeks permission to travel to Srilanka. In this regard, the learned counsel for the petitioner relied upon the judgment passed in the case of Premkumar Thangadurai and another Vs. State the Inspector of Police, Central Crime Branch, Team II, Veperi, Chennai by this Court in Crl.R.C.No.31 of 2018 dated 11.01.2018, wherein it is held as follows:

"6. In the light of the undertakings informed in the affidavits, this Court would modify the order of the Court below to one permitting petitioners to travel abroad and direct that upon filing of the final report, Court below cause service of summons on petitioners also by addressing the same to summons to the e-mail address hannahprem Kumar@yahoo.com as also residential address "Castle Hanna" No.12/1A, Durga Colony, Sembakkam, Chennai-600 073."

8. He also relied upon the judgment in the case of Srichand P.Hinduja Vs. State Through C.B.I., New Delhi reported in 2002 AIR (SC) 401, wherein it is held as follows:

"3. In a criminal case known as Bofors case three Hinduja brothers are charge-sheeted for the offences punishable under Sections 120-D and 420 of the Indian Penal Code and Sections 5(2) read with 5 (1)(d) of the Prevention of Corruption Act, 1947 as per the affidavit filed today before this Court by the Central Bureau of Investigation. The Special Judge, as well as the High Court has passed the orders releasing the appellants on bail. However, a condition, not to go abroad, has been imposed. For this purpose it was pointed out to the High Court, that if the accused are permitted to go abroad, it would affect the smooth progress of the trial and there are reasonable grounds to believe that they would not return back to India to face the trial. It is also pointed out that the appellants were Indian Nationals at the time of registration of the FIR and

thereafter they have acquired British and Swiss Nationalities.

7. Considering the facts and circumstances, for the time being as an interim measure, the appellants, namely, Mr. Srichand P. Hinduja (in Crl. Appeal No..... of 2001 @ SLP (Crl) 1828/2001) and Mr. Gopichand P. Hinduja (in Crl. Appeal No..... of 2001 @ SLP (Crl) No. 1829 of 2001) are permitted to go abroad on the following conditions :

1. Both the appellants would execute a bond for a sura of Rs. 15 crores (rupees fifteen crores) each with a bank guarantee for the like amount to the satisfaction of the Special Judge;

2. On their behalf counsel will remain present on the date of posting of the matter and would not ask for adjournment on the ground that the appellants are not present in India.

3. The appellants will remain present before the Special Judge as and when their presence is needed in the case.

4. If there is any violation of the aforesaid conditions, it would be open to the Special Judge to pass appropriate orders for cancellation of bail of the appellants.

8. In any case, this order would not adversely affect further proceedings in the trial Court and the Court will deal with the matter without being influenced in any way by this order or any observations made in the order passed by the High Court.

9. This interim measure is upto 20th August, 2001 and the matter be listed before this Court on 7th August, 2001 for further hearing and directions."

9. He also relied upon the judgment in the case of E.V.Perumal Samy Reddy and Others Vs. State rep. by the Deputy Commissioner of Police, Ambattur Range, Chennai and Another reported in 2014 (1) MLJ (Criminal)125, wherein it is held as follows:

"13. Petitioners are facing criminal prosecutions. They are granted bail/anticipatory bail. They are holders of valid Indian Passports. They have strong roots in the society. They are business people. They need to travel abroad often. So

far there is no valid restriction on their movement by any Court order or Ministry of Home Affairs or External Affairs. They are not stated to be involved in any heinous crimes. They are not terrorists. Nor anti-social elements. There is no allegation that they have absconded. Thus, they cannot be brought under any one of the categories with respect to whom L.O.C. orders are being issued .

14. In CrI.O.P.No.8864 of 2010 (A.ARUMUGARAJA Vs. DEPUTY COMMISSIONER OF POLICE, ADYAR, CHENNAI AND ANOTHER), dated 21.04.2010, in CrI.O.P.No.21441 of 2010 (A.ARUMUGARAJA Vs. DEPUTY COMMISSIONER OF POLICE, ADYAR, CHENNAI AND ANOTHER), dated 23.09.2010 and in CrI.O.P.No.30704 of 2012 (R.VISWANATHAN Vs. DEPUTY COMMISSIONER OF POLICE KILPAUK, CHENNAI), dated 04.01.2013 in certain matrimonial matters enabling persons to go abroad, this Court directed lifting of L.O.C. orders.

15. In the facts and circumstances of this case and due to the subsequent developments, so far as the petitioners are concerned, L.O.C. orders becomes irrelevant."

10. In the case on hand the petitioner already was granted anticipatory bail and the conditions imposed by this Court were also duly complied with. The petitioner is not having possession of Indian passport and moreover, the Indian passport expired even as early as on 23.10.2017 itself. Further the children of the petitioner are at Srilanka and his parents are residing at Chennai. The Hon'ble Supreme Court of India has observed in the case of Menaka Gandhi Vs. Union of India reported in 1978 (1) SCC 248, that case "personal liberty" within the meaning of Article 21 of the Constitution includes within its ambit, a right to go abroad and consequently, no person can be deprived of this right except according to the procedure prescribed by law.

11. In the case on hand, as against the petitioner the case has been registered under the Passports Act. It is also seen from the judgment in the case of E.V.Perumal Samy Reddy and Others Vs. State rep. by the Deputy Commissioner of Police, Ambattur Range, Chennai and Another reported in 2014 (1) MLJ (Criminal)125, wherein it is also held as follows:

"9. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign

countries. One' such personal freedom and liberty cannot be abridged. "See: Article 21 Constitution of India). In the celebrated in Menaka Gandhi V. Union of India AIR 1978 SC 25 the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right. Menaka Gandhi V. Union of India (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of "Due Process of Law".

12. In view of the above judgments rendered by this Court as well as the Hon'ble Supreme Court of India, this Court is of the view that the petitioner can visit Srilanka. Now, the representation of the petitioner is pending on the file of the respondents.

13. Considering the above facts and circumstances of the case, this Court is of the opinion that the petitioner shall be permitted to visit Srilanka on certain conditions. Accordingly, the respondents are directed to consider the representation of the petitioner dated 04.01.2019 and permit him to visit Srilanka on certain conditions without affecting the investigation and trial pursuant to the crime registered in Crime No.322 of 2018 on the file of the third respondent within the period of two weeks from the date of receipt of this order.

14. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

1.The FRRO- Foreigners Regional Registration Office,
No.26, Shasthri Bhavan - Annexe Building,
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2.Deputy Passport Officer,
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Royala Towers,
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3. Inspector of Police,
Team-VII, Fake Passport Wing,
Central Crime Branch,
No.132, Commissioner of Police Office Building,
Vepery, Chennai - 600 007

4. The Additional Public Prosecutor,
High Court of Madras

+3ccs to Mr.D.Vijayababu , Advocate SR.No. 32296

+1cc to Mr.Venkataswamy Babu, Advocate SR.No. 32900

W.P.No.2471 of 2019

A.SK(05/04/2019)



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