

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.27943 of 2019

Pramod Kumar

... Petitioner

Versus

1. The Regional Passport Officer,
Regional Passport Office,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.
2. The Central Bureau of Investigation,
Represented by the Additional Superintendent of Police,
CBI/EOW, Chennai.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 1st respondent to consider the application made by the petitioner for the issue of a fresh passport and issue the same forthwith for a period of ten years.

For Petitioner ::M/s.Menon

For 1st Respondent ::M/s.Swarnalatha,
Central Government Standing Counsel

For 2nd Respondent ::Mr.K.Srinivasan,
Special Public Prosecutor

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ORDER

This Writ Petition has been filed by the petitioner to issue a Writ of Mandamus, directing the 1st respondent to consider the application of the petitioner for issuance of fresh passport for a period of ten years.

2.Heard M/s.Menon, learned counsel appearing for the petitioner and M/s.Swarnalatha, learned Central Government

Standing Counsel for the 1st respondent and Mr.K.Srinivasan, learned Special Public Prosecutor [CBI Cases] for the 2nd respondent.

3.The learned counsel for the petitioner submitted that the petitioner belongs to 1989 batch of Indian Police Service Officers in the Tamil Nadu Cadre and presently, he is holding the rank of Inspector General of Police and stationed at Chennai as IG, Traffic and Road Safety. The petitioner holds an Indian Passport bearing No.E3242082 issued on 25.02.2002 and valid upto 29.04.2012. The petitioner's daughter had applied to the University College, London for LLM Course 2019-2020. In Anticipation, the petitioner, as per the rules on 17.12.2018 submitted a prior intimation to the Director General of Police, Chennai in renewing his passport as he intends to accompany his daughter to United Kingdom for the purpose of admitting her in the said college. The Office of the Director General of Police, Chennai by its memorandum dated 13.05.2019, acknowledged the prior intimation of the petitioner. The petitioner's daughter secured admission to the above mentioned course which would to commence by 22.09.2019. Hence, the petitioner applied for application of fresh passport on 15.05.2019 duly enclosing the supporting documents including the prior intimation letter to the Director General of Police. The petitioner received a communication on 18.06.2019 from the passport authority/1st respondent about adverse police verification mentioning that CrI.O.P.No.1611 of 2016 filed by the CBI is pending against him before this Court, against the closure order dated 19.10.2015 passed by the Special Court for CBI Cases, Coimbatore in C.C.No.2 of 2017. This information was considered to be adverse and explanation was sought from the petitioner, as to why the above information material was suppressed in his passport application.

4.The Criminal proceedings at the instance of CBI is aroused pursuant to the order of this Court dated 19.04.2011 made in CrI.O.P.Nos.5356 and 2691 of 2011. These Criminal Original Petitions were filed by the depositors of M/s.Paazee Forex Trading India Private Limited, seeking transfer of investigation registered by the Central Crime Branch (CBI), Tiruppur in Crime No.26 of 2009, which pertains to M/s.Paazee Forex Trading India Private Limited. M/s.Paazee Forex alleged to have cheated large number of depositors to the tune of Rs.1,210 crores. The Directors of the Company were granted anticipatory bail on 08.10.2009. Subsequently, another case in Crime No.3068 of 2009 was registered under Section 365 of IPC on 09.12.2009, pursuant to the complaint of one of the Directors of M/s.Paazee Forex Kamalavalli Arumugham to the Deputy Superintendent of Police, Tiruppur that she was kidnapped on 08.12.2009 and she named the three police personnels in the complaint and one private

individual. The investigation in Crime No.26 of 2009 was registered against M/s.Paazee Forex on 24.09.2009 and transferred to CBCID, Vellore on 23.03.2010 and Crime No.3068 of 2009 pertaining to the kidnapping of Kamalavalli was also transferred to CBCIB, Vellore. Thereafter, an association of investors of M/s.Paazee Forex filed Crl.O.P.No.5356 of 2011 under Section 482 of Cr.P.C, for a direction to transfer of investigation to CBI and one investor M/s.K.Loganathan filed Crl.O.P.No.2691 of 2011 for transfer of investigation in Crime No.26 of 2009 to CBI. This Court by order dated 19.04.2011 in Crl.O.P.Nos.5356 & 2691 of 2011 directed the transfer of investigation in Crime Nos.26 & 3068 of 2009 to CBI. Thereafter the petitioner filed W.P.No.21801 of 2012 before this Court on challenging violation of Section 6A of the Delhi Special Police Establishment Act and sought direction to restrain the CBI from further proceedings in this case. The said Writ Petition was dismissed by order dated 05.10.2012, against which the petitioner filed appeal in W.A.No.12 of 2013 before this Court and the same was also dismissed on 29.04.2013.

5.The petitioner challenged W.P.No.21801 of 2012 and the related Judgment in W.A.No.12 of 2013 before the Hon'ble Supreme Court in SLP (Civil) No.17999 of 2013, which was later converted as Civil Appeal in C.A.No.3062 of 2015. The petitioner also challenged the order dated 19.04.2011 in Crl.O.P.Nos.5356 & 2691 of 2011 before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed Civil Appeal No.3062 of 2015 and remanded W.P.No.21801 of 2012 and Crl.O.P.Nos.5356 & 2691 of 2011 for fresh consideration. Thereafter, one Prathap Singh Nagar a third party to C.C.No.2 of 2013 filed a petition seeking return of documents which was seized from his residence in Crl.M.P.No.229 of 2014. The Court below dismissed the petition by order dated 15.07.2014 against which Crl.R.C.No.838 of 2014 was filed before this Court. This Court by order dated 13.08.2015 in Crl.R.C.No.838 of 2014, referring the observations made in the Hon'ble Apex Court order in Civil Appeal in 3062 of 2015, observed that the CBI is not having power to conduct further investigation or to raise any objection with regard to return of documents and set aside the order of the lower Court in Crl.M.P.No.229 of 2014.

6.The petitioner filed the order dated 13.08.2015 in Crl.R.C.No.838 of 2014 before the lower Court. The lower Court by order dated 19.10.2015 closed the case in C.C.No.2 of 2013. Against the said order, the CBI has filed Crl.O.P.No.1661 of 2016 before this Court and admittedly there is no stay. In view of the same, according to the petitioner there is no criminal proceedings pending against the petitioner. When the petitioner was sought for clarification, the petitioner by him letter dated 27.06.2019 to the 1st respondent, reiterated that Crl.O.P.No.1661

of 2013 filed by CBI pending before this Court cannot be equated to pendency of a criminal case in criminal Court. The High Court is an Appellate Court Cum Constitutional Court and not a Criminal Court.

7.The learned counsel for the petitioner further submitted that as per the notification of Ministry of External Affairs [G.S.R.570 (E)] dated 25.08.1993, permission from the Court would be required only where criminal cases are pending before a Court. Further, the petitioner had informed the Director General of Police, his employer under the rules seeking for issuance of fresh passport from the 1st respondent. At no point of time during the investigation of the criminal case, the passport of the petitioner was impounded and seized. In respect of one Prathap Singh Nagar whose passport was seized during search in connection with the above criminal case, the seized passport was ordered to be returned as per the direction of this Court. The main reason of the petitioner seeking fresh passport is to accompany his daughter to United Kingdom, help her to join the course and to secure proper accommodation etc. This could be done only on issuance of passport. On renewal of the passport, the petitioner has to apply for visa and time is running out. Further right to travel abroad is a matter of fundamental right under Article 21 of the Constitution of the India.

8.He further submitted that the co-accused John Prabhakar in C.C.No.2 of 2013 applied for issuance of a fresh passport, which was denied by the 1st respondent on the ground that CrI.O.P.No.1661 of 2015 is pending before this Court. As per GSR 570 (E) of the Ministry of External Affairs, the said John Prabhakar, filed CrI.O.P.No.24216 of 2018 seeking direction for renewal of passport and this Court granted permission to the said John Prabhakar for renewal of passport and to travel abroad. The petitioner's case is on an identical footing and he undertakes to return to India on completion of his daughter's admission formalities. The petitioner is a Senior police officer, who is in the government service and his travel is subjected to the approval of Director General of Police/Government and would come back within the stipulated time of permission granted.

9.Further, the learned counsel for the petitioner filed rejoinder to the counter affidavit filed by the 1st and 2nd respondent. In the rejoinder he had reiterated his earlier submissions, apart from that he had taken objections to the 2nd respondent interpretation of the order of the Division Bench in W.P.Nos.38696 and 39989 of 2016, dated 12.01.2017, more specifically with regard to paragraph 76(i), wherein it is held that:-

"(i)The Criminal Proceedings initiated by the CBI against the petitioner is still pending and the contra observations recorded in the order dated 13.08.2015 in Crl.R.C.No.838 of 2014 and the order dated 09.08.2015 in O.A.No.165 of 2016 are factually incorrect."

10.Further, the learned counsel for the petitioner relied upon the order of this Court in the case of "Durai Murugan Versus Regional Passport Officer" in W.P.No.29902 of 2018, dated 06.12.2018, wherein it is held that:-

"9.The Hon'ble Apex Court in Satwant Singh Sawhney Vs. D.Ramarathnam, Assistant Passport Officer and others, AIR 1967 SC 1836, specifically held that travelling to a foreign country is also a fundamental right and refusal to issue passport or withdrawal of the same would certainly violate Articles 14 and 21 of the Constitution of India."

11.The learned counsel for the 1st respondent/The Regional Passport Officer filed a counter and submitted that the petitioner had applied for passport on 26.08.2002. Based on the clear police verification report received from the authorities, passport No.E3242082 dated 25.09.2002 valid till 24.09.2012 was issued to the petitioner. Subsequently, the petitioner applied for reissuance of passport on 15.05.2019. Since the petitioner applied for reissuance of passport, his application was processed on pre police verification. In the application, the petitioner gave an undertaking that "I am aware that under the Passports Act, 1967 it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document. Furthermore, I solemnly affirm that "I have not been charged with criminal proceedings nor is there any arrest warrant or summons pending any Court of law in India against me".

12.The 1st respondent received adverse report from the Commissioner of Police, Chennai with remarks that Crl.O.P.No.1661 of 2016 filed by the CBI against the closure order dated 19.10.2015 in C.C.No.2 of 2013 is still pending before the Court below. Hence, the 1st respondent issued show cause notice in SCN/308770549/19 dated 18.06.2019 to the petitioner. The petitioner in his reply dated 22.07.2019 gave an explanation that this Court has not passed any interim order or stay in Crl.O.P.No.1661 of 2016, hence the trial Court order is in operation. The 1st respondent on receipt of the adverse report from the Commissioner of Police against the petitioner has taken a view that the provisions of Section 6(2)(f) r/w Section 5(2)(c) of the Passport Act, 1967 would be attracted.

Further in view of the notification of the Ministry of External Affairs in G.S.R. 570 (D), dated 25.08.1993 exemption can be given subject to certain conditions therein. In the said notification, it is mentioned as follows:-

"(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."

13.The learned counsel for the 2nd respondent filed a counter, produced the copy of the Judgment of the Division Bench in W.P.Nos.38696 & 39989 of 2016 dated 12.01.2017 and the order of the Hon'ble Supreme Court in SLP (Civil) Nos.12112-12113 of 2017, dated 12.08.2018 and in which the sequence of how the cases in Crime No.26 of 2009 and Crime No.3068 of 2009 came to be registered and thereafter transferred to the file of the CBI have been recorded.

14.He further submitted that the Hon'ble Supreme Court in W.P.(Civil) No.38 of 1997, held that Section 6A of Delhi Special Police Establishment Act is invalid and violative of Article 14 of the Constitution of India by Judgment dated 06.04.2013. In view of the same, W.P.No.21801 of 2012 is remanded back by the Hon'ble Supreme Court by order dated 17.03.2015, does not merit consideration. He had also placed reliance on the order of the Division Bench in para 76, wherein observation has been made in Crl.R.C.No.838 of 2015 is contra to the references made by the Apex Court, though in a different proceedings, which cannot be brushed aside.

15.Further, the Supreme Court in Civil Appeal Nos.12112-12113 of 2013 by judgment dated 12.08.2018, had confirmed the order of the Division Bench of this Court in W.P.Nos.38696 & 39989 of 2016, dated 12.01.2017. The petitioner being aware of the orders of the Division Bench of this Court as well as the order of the Supreme Court had furnished the application for renewal of passport with false particulars. It is to be seen that the petitioner is a senior police officer in IPS cadre.

16.This Court considered the rival submissions and perused the materials available on records.

17.The contention of the learned counsel for the petitioner is that the pendency of Crl.O.P.No.1661 of 2015 before this Court would not amount to pendency of criminal case before the criminal Court, cannot be countenanced and the passport authority as per Section 5(2)(c) has refused to accept the application for passport renewal of the petitioner. It is now

admitted by the petitioner that CrI.O.P.No.1661 of 2016 is pending before this Court, in which the petitioner has been appeared and prosecuting the same. The said CrI.O.P.No.1661 of 2016 is against the closure order passed in C.C.No.2 of 2013 dated 13.08.2015 by the learned Special Judge for CBI Cases, Coimbatore. The pendency of CrI.O.P.No.1661 of 2016 before this Court amounts to pendency of the criminal case against the petitioner and further fortified by the observations made in the order of the Division Bench of this Court in W.P.Nos.38696 & 39989 of 2016 as well as the order of the Hon'ble Supreme Court in SLP (Civil) Nos.12112-12113 of 2017. Further, as per Chapter II Section 6 of the Code of Criminal Procedure, the constitution of criminal courts are as follows:-

"6.Classes of Criminal Courts.- Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

- i) Courts of Sessions;
- ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate;
- iii) Judicial Magistrates of the second class;
- and
- iv) Executive Magistrates."

18.From plain reading of the same, it is seen that the criminal Court includes High Court. Hence, the pendency of CrI.O.P.No.1661 of 2016 before this court against the petitioner would attract Section 6(f) of the Passports Act, 1967 and the 1st respondent had rightly not renewed the passport of the petitioner.

19.In the result, this Writ Petition is disposed of, with the direction to the petitioner to submit and rectify the renewal application, incorporating the pendency of CrI.O.P.No.1661 of 2015 to the 1st respondent.

20.Since CrI.O.P.No.1661 of 2015 is pending before this Court, the petitioner is directed to file affidavit of undertaking that he would appear before this Court at all time and to prosecute and cooperate with the disposal of CrI.O.P.No.1661 of 2016, without any hindrance or obstacle, citing the reason of his absence due to the travel undertaken. The copy of the said undertaking should be submitted to the 1st respondent. On receipt of the same, the 1st respondent is directed to consider the application submitted to re-issue the passport to the petitioner, in accordance with law, if otherwise

the application is in order and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this Court and communicate the decision to the petitioner. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Passport Officer,
Regional Passport Office,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.
2. The Additional Superintendent of Police,
The Central Bureau of Investigation,
CBI/EOW, Chennai.

+1cc to M/s.Menon, Advocate, S.R.No.91340

+1cc to M/s.Swarnalatha,, Advocate, S.R.No.91437

W.P.No.27943 of 2019

MP (CO)
CS/11/12/2019

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