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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.14892 of 2017

Mohammed Ibrahim Shamsudeen,
No.1/1A, Vandiammal Koil Street,
Padikuppam, Chennai 600 107

.. Petitioner

Versus

1. The Regional Passport Office,
Old No.85, New No.158 Royala Towers,
No.243, 4th Floor, Anna Salai,
Mount Road, Chennai - 600 002

2. The Superintendent of Police,
Crime Branch Police,
Kancheepuram District
(Cr.No.15 of 2015)

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent the regional passport Office at No.158, Royala Towers, 243, 4th Floor, Anna Salai, Chennai 600 002 to return the passport of Mohammed Ibrahim Shamsudeen dated 26.09.2014 valid till 25.09.2024 in No.Z2963902 to the petitioner.

For Petitioner : Nr.N.A.Kareem

For Respondent-1 : Mr.G.Karthikeyan,
Assistant Solicitor General

For Respondent-2 : Mr.V.Shanmugasundar,
Special Government Pleader



ORDER

This Writ Petition has been filed by the petitioner seeking for a direction to the first respondent to return his passport No.Z2963902 issued on 26.09.2014 and valid upto 25.09.2024.

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2. According to the petitioner, due to some conflicts, the erstwhile Company has given a complaint against the petitioner before Central Crime Branch, Kancheepuram stating that the petitioner released some business secrets to third parties against the interest of the company, due to which, they have incurred a loss around Rs.50,00,000/- and a case in Crime No.15/2015 has been registered against the petitioner for the offences under Sections 406 and 420 IPC and the petitioner was remanded to judicial custody. Subsequently, he was released on bail, during 2016.

3. According to the petitioner, his passport No.Z2963902 issued on 26.9.2014 and valid till 25.09.2024, has neither been impounded nor seized by the authority for any violation of the Passport Act and misuse. His passport has nothing to do with his arrest and the case pending against him and the Regional Passport office has no reason for impounding it. In all respects, he seeks for return of his passport to complete many of his agendas and genuine purpose to visit other countries for performing Umrah and canvassing business, as he is out of employment at present. All his representations sent to the first respondent to return his passport, went in vain. Hence, the petitioner has approached this Court seeking the above direction.

4. Refuting the allegations, the second respondent, namely the Superintendent of Police, Kancheepuram District, has filed a counter affidavit stating that the petitioner/accused absconded from the date of inception of registering the first information report in Cr. No.15/2015 against him and he moved Anticipatory Bail before this court in CrI.O.P. No.21691/2015 and it was dismissed on 22.9.2015 with a direction that the passport of the petitioner/accused shall be under the custody of the police, till the investigation is completed. The investigation in the case in Cr. No.15/2015 is to be completed for want of Forensic Report from the concerned authorities. In such circumstances, though he has not violated the Passport Rules, as the impound order is in force, the petitioner has no locus standi to file this writ petition before this court seeking to issue a writ of mandamus to return his passport. The merits of the case in Cr. No.15/2015 on the file of DCB, Kancheepuram will be proved only during trial of the above case along with the documents filed therein. The petitioner has already suffered two dismissal orders seeking anticipatory bails. It is further stated that the petitioner has filed this petition for return of passport only



to abscond to foreign country in order to escape from the clutches of law and that the charge sheet is not yet filed. The petitioner was granted bail in CrI.O.P.No.10792 of 2016 on 12.05.2016.

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5. The learned counsel for the petitioner submitted that the petitioner has been facing vexatious case and charges levelled against him by his ex-employer and that no passport rules have been violated and as no impound order is in force, the petitioner approached the first respondent for return of his passport and issued a legal notice. It is his further submission that impounding of passport has affected his fundamental rights enshrined by the Constitution of India. It is further stated that the petitioner is an MBA graduate and that he is out of employment for two years due to false and frivolous complaint given by his ex-employer, as he protested against the usage of harmful chemicals in manufacturing/purifying process, and on mere speculation that the company had incurred loss of several lakhs without any iota of evidence to prove the same. It is further stated by the learned counsel for the petitioner that the petitioner had lost many marketing associates opportunities from countries like Saudi, Bahrain and that the DCB, Kancheepuram, has not filed any charge sheet till date, on the flimsy ground that the forensic department report is awaited.

6. Per contra, learned Special Government Pleader appearing for the second respondent contended that if the passport is returned to the petitioner, he will abscond to foreign countries in order to escape from the clutches of law in the pending criminal case against him in Cr. No.15/2015 on the file of DCB, Kancheepuram.

7. Heard Mr.N.A.Kareem, learned counsel for the petitioner, Mr.V.Shanmugasundar, learned Special Government Pleader appearing for the second respondent and Mr.G.Karthikeyan, Assistant Solicitor General, appearing for the first respondent and perused the materials available on record.

8. The notification in G.S.R.570(E), dated 25.08.1993 issued by the Ministry of External Affairs, Government of India, mandates certain conditions for permitting a citizen of the country, against whom proceedings are pending before a criminal court in India to fly abroad. At this juncture, it is relevant to usefully extract the notification issued by the Ministry of External Affairs, Government of India, in this regard :



"MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi, the 25th August, 1993

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G.S.R.570(E) - In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298 (E), dated the 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 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

(v) 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."

9. When there is no offence, which has been taken cognizance by any criminal Court, it cannot be treated as a proceeding pending before the criminal Court even as per the notification issued by the Ministry of External Affairs, New Delhi, dated 25.08.1993 in G.S.R.No. 570(E) and following the same, orders were also passed directing the authorities to issue the passport in similar matters.

10. In *Satwant Singh Sawhney V. D.Ramarathnam*, Assistant Passport Officer, AIR 1967 SC 1836, it is 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 Article 14 and 21 of the Constitution of India.

11. In the case on hand, the petitioner intends to go abroad on a business tour. Hence, it is necessary for him to have a passport. Though the order in Crl.O.P.No.21691/2015 was passed as early as on 22.09.2015, till date no charge sheet has been filed by the police. In such circumstances, the writ petitioner is entitled to the grant of relief sought for in this writ petition. Accordingly, this writ petition is disposed of, with a direction to the first respondent to return the passport of the petitioner in No.Z2963092 within a period of four weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Asr/gg

To

1. The Regional Passport Office,
Old No.85, New No.158 Royala Towers,
No.243, 4th Floor, Anna Salai,
Mount Road, Chennai - 600 002
2. The Superintendent of Police,
Crime Branch Police,
Kancheepuram District



+1 cc to M/s.G.Karthikeyan Advocate sr22992
+1 cc to the Government Pleader sr22659

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