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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.6482 OF 2021

AND

WMP NO.7062 OF 2021

Noushad Thazhath

.... Petitioner

Vs

1. The Deputy Superintendent of Police,
CBCID, Special Investigation Team,
Coimbatore.
Crime No.2111 of 2002.
(B4 Race Course Police Station)
2. The Regional Passport Officer,
Regional Passport Office,
Kozhikode,
Eranhinpalam Post,
Kozhikode - 673 006,
Kerala State.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to grant passport for a period of 3 years from the date of issuance to the petitioner to travel abroad pending PRC No.2 of 2013 on the file of the learned Judicial Magistrate No.3, Coimbatore, in line with the earlier orders passed by this Court.

For Petitioner

: Mr.N.Manokaran

For Respondent

: Mr.Stalin Abhimanyu,
Government Counsel (for R1)

Mr.Infant Dinesh, (for R2)
Central Government
Standing Counsel



O R D E R

This writ petition has been filed seeking a direction to the respondents to grant passport for a period of 3 years from the date of issuance to the petitioner to travel abroad, pending PRC No.2 of 2013 on the file of the learned Judicial Magistrate No.3, Coimbatore, in line with the earlier orders passed by this Court.

2.It is the case of the petitioner that he is a native of Kerala State and is a non-resident of India, doing business at Dubai, UAE and that, he and his children are affected by eye blindness and are periodically taking treatment in Aravind Eye Hospital, Madurai. The petitioner further stated that he applied for passport. Accordingly, the second respondent issued passport to him for a period of 10 years on 17.11.2005, which was valid upto 16.11.2015. However, all the pages in the passport were stamped by the immigration authorities before the expiry date in view of the frequent travels. Therefore, the petitioner was issued with a fresh passport on 09.09.2009, which was valid upto 08.09.2019. Again, all the pages in the said passport were exhausted, which compelled him to apply for a fresh passport in the year 2015. The said application was rejected by citing the pendency of the case in PRC No.2 of 2013 on the file of the Judicial Magistrate No.III, Coimbatore. Subsequently, after obtaining court orders, he was issued with fresh passports on five occasions, only for short duration and the passport lastly issued is going to expire on 18.09.2021 and he cannot travel six months before expiry date. Therefore, the petitioner approached this court with the present writ petition, seeking a direction to the respondents to issue passport for a longer period.

3.The learned counsel for the petitioner submitted that in view of the petitioner's business in Dubai, UAE, he has to travel abroad frequently; during the period between 16.04.2006 and January 2021, he travelled abroad for more than 150 times and stayed there for more than 60 months; and initially, he was issued with passport for a period of ten years and hence, the claim of the petitioner for grant of passport for three or five years, may be considered by the respondents. The learned counsel further submitted that the criminal case is pending against the petitioner for a long period, however, he has been regularly attending the court proceedings and considering the said fact and also following earlier order passed in CrI.OP.No.5068 of 2018, this court, by order dated 19.08.2020, in CrI.OP.No.4399 of 2020, granted permission to the petitioner to depart from India. For better appreciation, the operative portion of the said order is extracted below:

“7.In view of the earlier order that was passed by this court and extracted herein above, this court



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is inclined to pass similar order in favour of the petitioner that when a criminal case is pending before a court, passport can be issued or renewed only on the basis of production of orders from the concerned court permitting the applicant to depart from India. In notification NOGSR 570 B, the conditions under which a passport or travel documents could be issued, have been enumerated. Taking into consideration the earlier conduct of the petitioner, as noted by the Judicial Magistrate No.III in his order dated 03.11.2015, this court grants permission to the petitioner to depart from India and return within a period of one year from the date of receipt of a copy of this order. Exemption is granted to the petitioner from the operations of the provisions of clause (f) sub section (2) of Section 6 of the Passports Act, for a period of one year from the date of receipt of a copy of this order. The petitioner shall abide by the conditions set out in the notification dated 25.08.1993.

8.This Criminal Original Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed."

Therefore, according to the learned counsel, there is no impediment for the respondents to issue fresh passport for a longer period.

4.On the other hand, the learned counsel appearing for the second respondent drew the attention of this court to the counter affidavit filed by the first respondent viz., Deputy Superintendent of Police, Special Investigation Division, Crime Branch CID, Coimbatore and submitted that as per the materials and records, this petitioner participated in the crime along with other accused and the evidence for their guilt will be proved only during the on-going trial. The proceedings of the case in PRC No.2/2013 are yet to commence and the questioning of this petitioner is yet to be initiated and therefore, the physical presence of every accused including the petitioner before the trial court is essential. Thus, according to the learned counsel, if passport is granted for 3 years, the trial will be affected.

5.Heard both sides and perused the records placed before this court.

6.It is an admitted fact that the criminal case in PRC No.2/2013 on the file of the Judicial Magistrate No.3, Coimbatore, is pending against the petitioner. Originally, he was issued with passport for the period from 17.11.2005 to 16.11.2015. Subsequently, he was re-issued with passport for the period from 09.09.2009 to 08.09.2019. Thereafter, he was granted passport for a period of one year, as per the orders of this



court, taking note of the notification in GSR No.570(E) dated 25.08.1993 issued by the Government of India modifying certain conditions mentioned in the earlier notification that the citizens against whom criminal cases are pending are exempted from the operation of Section 6(2)(f) of the Passport Act, if they produce the orders from the court concerned permitting them to travel abroad.

7.The petitioner sought a direction to the second respondent to issue passport for a longer period, at least by three years, which has been seriously opposed on the side of the respondents stating that the case is at trial stage and the presence of the petitioner is very much essential. Therefore, considering the legal position that the passport authority cannot reject any application mechanically on the ground of pendency of a criminal case and also following the earlier orders as referred to above, this court is inclined to grant necessary permission to the petitioner to depart from India and return, after granting exemption from the operations of the provisions of clause (f) sub section (2) of Section 6 of the Passports Act, in line with the earlier order passed in CrI.OP.No.4399 of 2020 dated 19.08.2020.

8.Accordingly, this writ petition stands disposed of, directing the respondent authorities to consider the claim of the petitioner and issue passport to the petitioner in line with the order passed in CrI.OP.No.4399 of 2020 dated 19.08.2020, as expeditiously as possible, preferably, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

vum

To

1. The Deputy Superintendent of Police,
CBCID, Special Investigation Team,
Coimbatore.
2. The Regional Passport Officer,
Regional Passport Office,
Kozhikode, Eranhinpalam Post,
Kozhikode - 673 006,
Kerala State.



Copy To

The Judicial Magistrate No.3,
Coimbatore.

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+1cc to Mr.N.Manokaran, Advocate, S.R.No.39690

+1cc to the Government Pleader, S.R.No. 40027

W.P.No.6482 of 2021 and
WMP No.7062 of 2021

KSM(CO)
RLP(24/09/2021)