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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 18366 of 2017
and
W.M.P. No. 19939 of 2017

Sivappugaz Thangavel

.. Petitioner

Versus

1. The Regional Passport Officer
1st Floor, Corporation Commercial Complex
Avinashi Road
Coimbatore - 641 018

2. The Superintendent of Police
Coimbatore Rural
Coimbatore

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to forthwith consider the claim of the petitioner for issuance of passport on the basis of clarification letter dated 17.5.2017 and to consequently direct the respondent to issue passport for travelling to abroad and return back to India on the basis of immovable properties security.

For Petitioner : Mr. L. Chandrakumar

For Respondents: Mr. T.V. Krishnamachari (R1)
Mr. Stalin Abhimanyu (R2)
Government Counsel

O R D E R

The present writ petition has been filed for issuance of Writ of Mandamus seeking a direction to the respondents to forthwith consider the claim of the petitioner for issuance of passport, on the basis of clarification letter dated 17.05.2017 sent by him.

2. According to the petitioner, on 19.12.2016, he submitted an application for issuance of passport. On scrutiny of the same, the first respondent issued a show cause notice dated 09.05.2017 seeking explanation from the petitioner with



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regard to the pending criminal cases registered against him, viz., Cr.No.359 of 2013, Cr. No. 239 of 2013, Cr. No. 249 of 2014, to which, the petitioner submitted his detailed reply dated 17.05.2017 stating that all the cases were falsely registered against him and he was not involved in any of the offences as alleged therein. It is stated therein that in the first case in Crime No. 359 of 2013 registered for the offences under Section 153 (B) (1) and 124A IPC, he obtained anticipatory bail from the Court of Principal District and Sessions Judge, Coimbatore in Cr.M.P.No.2330 of 2013 dated 20.09.2013; and after investigation, charge sheet was filed and the same was taken on file as C.C. No. 68 of 2015 by the Judicial Magistrate, Mettupalayam. To quash the said Criminal Proceedings, the petitioner filed a Criminal Original Petition before this court and the same is pending. With respect to the case in Cr. No. 239 of 2013 registered for the alleged offence punishable under Section 147, 294 (b) and 324 IPC, charge sheet has not been filed so far; and as per Section 468 Cr.P.C., charge sheet ought to have been filed within three years, but even after seven years, the investigation agency has not filed the charge sheet. As regards Crime No. 249 of 2014 registered for the offences punishable under Sections 294 (b), 324 and 506 (ii) IPC, he obtained anticipatory bail from the Court of the Principal District and Sessions Judge in Coimbatore in Crl.M.P. No. 2064 of 2014 on 09.07.2014. The petitioner stated that his reply was not considered by the first respondent. Feeling aggrieved, he has come up with this writ petition for the aforesaid relief.

3. The learned counsel for the petitioner submitted that this court in similar circumstances in WP (MD) No. 23468 of 2017 [J. Mathanagopal v. The Regional Passport Officer, Madurai] by order dated 23.07.2018, disposed of the said writ petition in the following terms:

"21. In the result, the writ petition is allowed and the impugned order in 170000-CPC-MDU dated 02.08.2021 passed by the first respondent is set aside. The petitioner is granted to make appropriate application seeking for issuance of No Objection Certificate and for return of his passport before the concerned Judicial Magistrate, namely the Judicial Magistrate, Sivakasi before whom C.C. No. 47 of 2018, is pending and on such application, the concerned Judicial Magistrate shall pass necessary orders within two days thereafter. Consequently, the petitioner is directed to produce the No Objection Certificate, if granted by the learned Judicial Magistrate, before the first respondent and on receipt of such No Objection Certificate from the petitioner, the first respondent shall



return back the passport of the petitioner forthwith. No costs. Consequently, connected miscellaneous petitions are closed."

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4. The learned counsel for the petitioner further submitted that in a circular bearing No.V.I/404/1/3/2014 of Ministry of External Affairs, CPV Division dated 27-08-2014, certain guidelines were issued for scrutinising the passport applications of citizens against whom criminal proceedings are pending. The relevant passage is usefully extracted below:

"2. As prescribed, an application is required to submit permission of the concerned court, as well as an undertaking in writing on plain paper, as provided at para 1 (d) of GSR 570 (E). A need has been felt to prescribe a standard format of undertaking for easy reference for citizens and passport issuing authorities. The proforma of undertaking in this regard is enclosed. This format is also being uploaded on the passport portal for applications.

3. Whenever any application against whom proceedings before a criminal court are pending approaches any passport issuing authority for the passport services, a copy of Gazette notification and proforma undertaking can be given to him/her to fulfil the requirements prescribed in the Gazette notification. On submission of the same, his/her passport application may be processed and passport may be issued as per the provisions of the GSR 570 (E) and the contents of the court order. Needles to mention that the other documents/requirements as applicable to other passport applicants are also required to be sought."

5. The learned counsel for the petitioner also submitted that the petitioner is inclined to file an affidavit of undertaking before the authority concerned for the purpose of issuance of passport.

6. On the other hand, the learned senior panel counsel for the first respondent drew the attention of this court to the averments made in the counter affidavit and submitted that as per Section 6 (2)(f) of the Passport Act, 1967, the passport authority shall refuse passport of the applicant, if any criminal case is pending before court. Section 6(2)(f) reads as follows:

"The Passport authority shall refuse to issue a passport or travel document for visiting any



foreign country under clause (c) of sub-section (2) of section 5 and on the ground that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India."

Placing reliance on the above provision, the learned counsel submitted that the application of the petitioner seeking issuance of passport could not be processed, due to pendency of the criminal proceedings.

7. Heard both sides. Admittedly, the petitioner is involved in three criminal cases, which are mentioned above. In Crime No.359 of 2013, after investigation, a charge sheet was filed and it was taken on file as CC No.68 of 2015 by the Judicial Magistrate, Mettupalayam. It is stated that the petitioner filed a criminal original petition to quash the said proceedings in CC No.68 of 2015 and the same is pending. In the second case in Cr.No.239 of 2013, it is stated that the investigating agency has not filed any charge sheet and in the third respondent in Cr.No.249 of 2014, it is not known as to whether charge sheet has been filed or not. Such being the status of the criminal proceedings, the first respondent is not justified in refusing to issue passport to the petitioner until the conclusion of the criminal proceedings pending against him. It is also to be noted that the petitioner undertakes to file an affidavit of undertaking before the learned Judicial Magistrate, Mettupalayam, that he will extend his cooperation for speedy disposal of the criminal proceedings.

8. Therefore, this court grants liberty to the petitioner to make appropriate application seeking no objection certificate before the Judicial Magistrate, Mettupalayam before whom Cr. No. 359 of 2013 culminated in CC No.68 of 2015, is pending and on such application, the concerned Judicial Magistrate shall pass necessary orders within a period of two days thereafter. Consequently, the petitioner is directed to produce no objection certificate, if granted by the learned Judicial Magistrate, before the first respondent and on such production, the first respondent shall consider the petitioner's application for issuance of passport.

9. This Writ Petition stands disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



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To

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1. The Regional Passport Officer
1st Floor, Corporation Commercial Complex
Avinashi Road
Coimbatore - 641 018
2. The Superintendent of Police
Coimbatore Rural
Coimbatore

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.49685
+1cc to M/s.T.V.Krishnamachari, Advocate, S.R.No.49608

WP. No. 18366 of 2017

SJ(CO)
CB(18/10/2021)