



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 26.07.2021

ORDER PRONOUNCED : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.(MD) No.11435 of 2021

and

W.M.P.(MD) No.8939 of 2021

WEB COPY

Gideon Jacob : Petitioner

vs.

1. The Union of India,
Ministry of External Affairs,
No.4095, B Wing, Jawaharlal Nehru Bhawan,
23-D, Janpath,
New Delhi.

2. The Regional Passport Officer,
Regional Passport Office,
Tiruchirappalli 620 002.

3. The Union of India,
represented by its Inspector of Police,
Central Bureau of Investigation(CBI),
Special Crime Branch (SCB),
17, 5th Avenue, Thiruvalluvar Nagar,
Besant Nagar, Chennai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ or order or direction in the nature of Writ of Mandamus, to direct the 2nd and 3rd respondents to give permission to the petitioner to visit Germany for a period of 3 months from 03.08.2021 to 03.11.2021 on the basis of the representation dated 09.06.2021.

For Petitioner : Mr.Isaac Mohanlal Senior Counsel for
Mr.K.Samidurai
For Respondents : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

ORDER

This Writ Petition had been filed seeking to issue a Writ of Mandamus, directing the respondents 2 and 3 to give permission to the petitioner to visit Germany for a period of 3 months from 03.08.2021 to 03.11.2021, on the basis of the representation dated 09.06.2021 and pass any other order or writ or direction in the nature of writ.



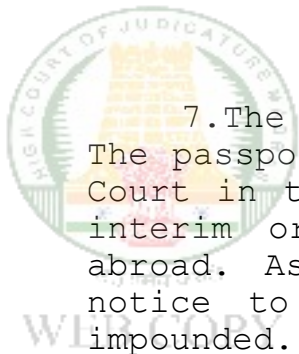
2. When the case came up for hearing, Thiru. Isaac Mohanlal, learned Senior Counsel for Thiru. K. Samidurai, learned counsel appeared on behalf the petitioner submits that the petitioner is a Senior Pastor and he was running a Mission by name, Mose Ministries. It had been carrying on charitable work, especially in aid of the destitute children. In the early 1990's there had been reports for female infanticide in and around Usilampatti, Madurai District. Therefore, the petitioner started a home for female babies. The home was run smoothly. Subsequently, the home was shifted to Tiruchirappalli from Madurai District.

3. While so, the Inspector of Police, K.K. Nagar Police Station, Trichy had registered a case in Crime No. 548 of 2015 against the petitioner under Sections 20 (2) of Tamil Nadu Hostel and Homes for Women and Children Regulation Act, 2014 and under Section 23 of Juvenile Justice Act, 2000 for alleged non registration of the home (Mose Ministries). Subsequently, in the year 2015, another case was registered by the 3rd respondent/CBI for the offences under Section 120 B r/w 361, 368, 201, 370 and 370 A of IPC.

4. Earlier, the petitioner had filed a writ petition in W.P.(MD) No. 24591 of 2018 against the Foreigners' Regional Registration Officer, Chennai and others, whereby, the petitioner sought regarding impounding of his passport and sought permission to travel abroad.

5. Thiru. Issac Mohanlal, learned Senior Counsel for the petitioner further submits that the wife of the petitioner and her children are the German citizens. The petitioner's wife had undergone 6th surgery. Due to the cases, the petitioner is now in India. He has to meet his wife, who is now under treatment. On earlier occasion, after obtaining the orders from the Court in W.P. (MD) No. 24591 of 2018, the petitioner was permitted to travel to Germany with certain conditions. As per the conditions, he had offered immovable property for a sum of Rs. 2 Crore as security and one surety from his blood relative. Accordingly, he had travelled and returned to India before the date prescribed by this Court. He had proved his *bona fides*. This time also, he needs 3 months time to visit his wife. Therefore, he seeks permission from this Court by way of filing the present writ petition.

6. Thiru. Issac Mohanlal, learned Senior Counsel invited the attention of this Court to the surrender certificate issued by the 1st respondent, Ministry of External Affairs regarding surrender of the passport to the 2nd respondent/Regional Passport Officer by the petitioner. The petitioner had already filed a Criminal Original Petition in CrI.O.P.(MD) No. 1403 of 2020 seeking to quash the case filed by the CBI on the ground that sanction had not been obtained. In the quash petition, interim stay was granted on 26.02.2020. Therefore, the case filed by the CBI before the competent Court had



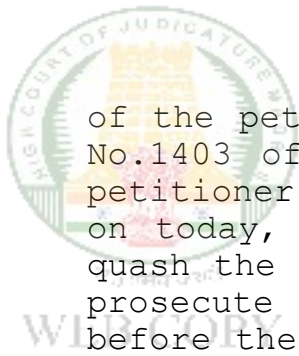
7.The passport is in possession of the petitioner as on date. The passport had not been impounded due to the order passed by this Court in the earlier Criminal Original Petition. Only based on the interim order of this Court, the petitioner was allowed to go abroad. As on today, the 2nd respondent had issued a show cause notice to the petitioner as to why his passport shall not be impounded. The petitioner is ready to abide by any conditions by this Court considering the status of his wife, who is ailing and undergoing treatment. The petitioner may be permitted to go abroad, Germany and return to India.

8.Ms.L.Victoria Gowri, learned Assistant Solicitor General appearing for the respondents submits that the impound of passport of the petitioner is kept on hold and now the passport is in the custody of the petitioner. The passport authorities are ready to abide by any conditions by this Court.

9.Ms.L.Victoria Gowri, learned Assistant Solicitor General is also appearing for the 3rd respondent/CBI. On behalf of the 3rd respondent, the learned Assistant Solicitor General strongly objects in permitting the petitioner to go abroad. She further submits that the case arose out of the fact that the petitioner had been running a home for the destitute female child at Madurai and subsequently, without the knowledge of the parents of the female child, the home was shifted to Tiruchirappalli. Later, the parents of the female child traced the children. Therefore, the case was registered by the Trichy Police. In the meanwhile, the 3rd respondent/CBI had also registered a case under Section 20 (2) of Tamilnadu Hostel and Homes for Women and Children Regulation Act, 2014 and under Section 23 of Juvenile Justice Act, 2000. The petitioner had brainwashed the female children against their own parents, which caused mental strain to the parents of the female children and they were not allowed to meet their parents and also the parents of the female children were not allowed to meet their children, which had resulted in registering a case.

10.After registration of the case, the petitioner had gone abroad and thereafter, he absconded from the month of February 2016 to October 2018. Therefore, the CBI could not complete the investigation and the petitioner had not cooperated with the investigation. The CBI Authorities could not proceed and when the wife of the petitioner visited India, the petitioner could not cooperate with CBI. On 30.06.2018, the petitioner was arrested, when he attempted to leave India. Therefore, the CBI had directed the passport authorities to impound the passport of the petitioner, which was challenged before this Court in the earlier writ petition in W.P.(MD) No.24591 of 2018.

11.In the earlier writ petition, the petitioner was directed to furnish sureties and on 11.02.2020, the writ petition was allowed. The passport authorities for impounding the passport



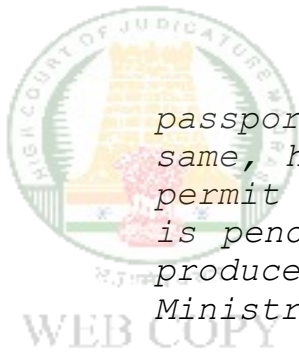
of the petitioner. Therefore, the petitioner had filed CrI.O.P.(MD) No.1403 of 2020 to quash the charge sheet. In that petition, the petitioner had obtained stay of the proceedings before the Court. As on today, there was no stay. The quash petition had been filed to quash the proceedings as the CBI had not obtained sanction order to prosecute the petition. Now, the CBI had filed the sanction order before the Court concerned, but the Court had returned the sanction order on technical ground. The same will be complied and resubmitted early. The order of interim stay had been granted only till the grant of sanction order. The right to travel claimed by the petitioner is not an absolute right. Therefore, this petition is liable to be dismissed.

12.For the submission of Ms.L.Victoria Gowri, learned Assistant Solicitor General, Mr.Isaac Mohanlal, learned Senior Counsel had replied as rejoinder stating that the accused had been in Germany. There is no extradition treaty between Germany and India. Till the petitioner had voluntarily surrendered before the Court concerned, no summon was issued against the petitioner. The petitioner went to Chennai and on the second day, the petitioner was informed of his arrest. The petitioner is a *bona fide* citizen of India. The petitioner is ready to offer another blood relative as surety and the petitioner's valuable property worth about Rs.2 Crores already offered as security is with the respondents.

13.Mr.Isaac Mohanlal, learned Senior Counsel also invited the attention of this Court to the surrender of the passport by the petitioner and the certificate issued by the Passport Officer regarding the same. Considering the earlier order passed by this Court in a similar circumstances in W.P.(MD) No.24591 of 2018, the very same prayer is sought for by the petitioner. The relevant portion of the same reads as follows:-

"4.The petitioner has come forward with the present Writ Petition stating that his passport should be returned to him, so as to enable him to visit his wife in Germany, who is undergoing medical treatment. Mere pendency of criminal case does not automatically disable the petitioner from going abroad.

5.The learned Assistant Solicitor General of India, on instructions, submitted that the Passport Officer is unable to handover the passport to the petitioner, as the final report has been filed by the CBI in connection with the criminal case registered by them pursuant to the direction of this Court. It is also suggested by the learned Assistant Solicitor General of India that the Passport Officer may not have any objection, if the fourth respondent permit the petitioner to travel abroad. Though the learned Assistant Solicitor General of India has no valid defence to retain the



passport without initiating any proceeding for impounding the same, he would only submit that the Passport Officer cannot permit a citizen to take a trip abroad, when a criminal case is pending before the Criminal Court in India. He has also produced before this Court, the notification issued by the Ministry of External Affairs, dated 25.08.1993.

6.The learned Counsel for the fourth respondent submitted that the final report has been filed before the Chief Judicial Magistrate Court, Trichy and that the same was taken on file. However, the case number is not given. It is in the said circumstances, the learned Counsel for the fourth respondent submitted that CBI is interested only in securing the petitioner's presence in connection with the proceedings, that is pending before the Court. The learned Counsel for the fourth respondent also submitted that the fourth respondent may give permission to the petitioner to go abroad, subject to satisfying the fourth respondent by producing immovable property as security and on surety by a blood relative of petitioner.

7.Though several legal issues have been raised in this matter in relation to the validity of the impugned order and the authority of respondents to prevent the petitioner from travelling abroad without even initiating a proceeding under Section 10(3) of Passport Act, without going into those contentious issues, this Court is of the view that the petitioner may be permitted to travel abroad subject to certain reasonable conditions, that is imposed by the fourth respondent and expressed before this Court. The learned Senior Counsel for the petitioner states that the petitioner is prepared to offer immovable property worth about Rs.2,00,00,000/- to the satisfaction of the fourth respondent as security and a surety from his blood relative. In such circumstances, this Court is inclined to pass the following order:

"The petitioner is directed to appear before Inspector of Police, namely, Mrs.Vaishnavi, CBI (Special Crime Branch), Chennai, within two days. On production of document / bond, offering immovable property for a value not less than two crores as security and one surety from any blood relative of the petitioner, the third and fourth respondents shall permit the petitioner to visit his wife in Germany and the fourth respondent shall give necessary orders giving No Objection for the petitioner's foreign trip and the third respondent shall hand over the passport to the petitioner, so as to enable the petitioner to go abroad. The petitioner shall give an undertaking



that his stay in abroad will not exceed beyond three weeks."

14.This Court considered the rival submissions.

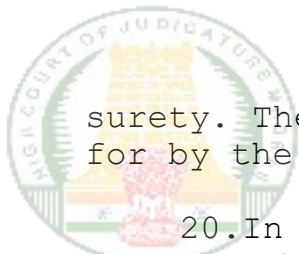
15.On perusal of the earlier order, it is found that the petitioner had gone abroad and had returned to India as found in the contentions raised in the affidavit filed in support of the writ petition. Also, the learned single Judge of this Court had allowed the said writ petition, quashing the letter dated 13.06.2018 issued by the 2nd respondent therein/Assistant Foreigners' Regional Registration Officer and directing the 3rd respondent therein, The Regional Passport Officer, Chennai, to hand over the petitioner's passport bearing No.Z4212203 to the petitioner within a period of two weeks from the date of receipt of a copy of that order.

16.It was observed in that petition that, it is open to the respondents to approach the passport authorities under Section 10(3) (e) of Passport Act and the 3rd respondent therein can pass appropriate orders under Section 10(3)(e) of the Act for impounding the passport after following the procedure and issue notice to the petitioner in the manner known to law.

17.Now, as per the counter of the Passport Officer, the Passport Officer is ready to abide by any conditions by this Court. The 3rd respondent/CBI had filed an elaborate counter pointing out the past conduct of the petitioner that he has absconded for a period of 2 years from 2016 to 2018 and thereby delaying the investigation and had not cooperated with the investigation. Those things are not relevant to consider the petitioner's petition now as the CBI had completed the investigation and filed charge sheet. After filing of the charge sheet by the CBI, the petitioner had moved this Court to quash the charge sheet filed by the CBI on the ground that sanction was not obtained to prosecute the accused.

18.Now, Ms.L.Victoria Gowri, learned Assistant Solicitor General submits that sanction had been obtained and the same was returned as defective, which will be cured in due course. Therefore, the petition filed by the petitioner in CrI.O.P.(MD) No.1403 of 2020 seeking to quash the charge sheet filed by the CBI even though heard and reserved for orders, orders have not been passed till date. Now the sanction order had been filed and returned as defective and it is likely to be cured and represented, whereby, quashing of the charge sheet does not arise.

19.Under those circumstances, the apprehension of the CBI that the petitioner may abscond cannot be accepted as reasonable considering the fact that this Court in its earlier order had insisted the petitioner to offer immovable property worth about Rs.2 Crore. He had accordingly furnished immovable property as security and one relative from blood relationship had given undertaking as



surety. Therefore, this Court is inclined to grant the relief sought for by the petitioner with the same conditions.

20. In view of the same, for the present, another two sureties from any blood relative of the petitioner, not the earlier surety, can give fresh undertaking for the petitioner. On doing so, considering the fact that already immovable property offered by the petitioner worth about Rs.2 Crore is available with the respondents as security before the learned trial Judge, the petitioner is permitted to move abroad considering the plight of his wife, who had suffered 6th surgeries. Considering the cordial relationship between the husband and wife, if the petition is dismissed, it will cause mental strain not only to the accused but also to his wife. Therefore, the petitioner is afforded an opportunity of visiting his wife. As already stated by the earlier single Judge of this Court in W.P.(MD) No.24591 of 2018, the petitioner has to come back to India within a reasonable period of 3 months, on or before 03.11.2021.

21. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

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Sub Assistant Registrar(CS)

To

1. The Union of India,
Ministry of External Affairs,
No.4095, B Wing, Jawaharlal Nehru Bhawan,
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3. The Union of India,
represented by its Inspector of Police,
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Besant Nagar, Chennai.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-24360[F] dated 29/07/2021)

W.P. (MD) No.11435 of 2021

29.07.2021

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