



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WP(MD)Nos.16700 and 16701 of 2021

and

WMP(MD)Nos.13600 and 13603 of 2021

P.Vadivel : Petitioner in WP(MD)No.16700 of 2021
P.Rajasekarapandian : Petitioner in WP(MD)No.16701 of 2021

Vs.

1.The Chief Immigration Officer,
Immigration Department,
Madurai Airport,
Madurai.

2.The Superintendent of Police,
O/o.The Superintendent of Police,
Ramanathapuram District.

3.The Inspector of Police,
Kadaladi Police Station,
Ramanathapuram District.

: Respondents in both cases

Prayer: Writ Petitions have been filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 2nd respondent to withdraw or cancel the lookout circular issued against the petitioners to the 1st respondent forthwith, by considering the petitioner's representation, dated 04.09.2021.

In Both WP's:

For Petitioners	: Mr.S.M.A.Jinnah
For 1 st Respondent	: M/s.L.Victoria Gowri Asst. Solicitor General of India
For R2 and R3	: Mr.K.Sanjai Gandhi Government Advocate (Crl. Side)

COMMON ORDER

Both the writ petitions are filed seeking a common order of cancelling the lookout notice that has been issued against these petitioners, by considering their representation, dated 04.09.2021.

2.When the learned counsel appearing for the petitioners arguing that even though the petitioners have been arrayed as accused in Crime No.260 of 2020, would submit that they have been granted bail and they were regularly complying with the bail conditions. All of a sudden, a look out notice has been issued against them and they are prevented from pursuing job in abroad.



According him, it is clear a violation of Article 21 of the Constitution of India. For that purpose, he relied upon number of judgments stating that lookout notice can be issued only by following proper procedures and before issuing lookout notice, the petitioners were not served with show cause notice.

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3. In respect of the cases, which are pending before the criminal court for the purpose of getting passport renewal, etc. the Ministry of External Affairs, Government of India, has issued the Official Memorandum, extracted hereunder:-

No.VI/401/1/5/2019
Government of India
Ministry of External Affairs
PSP Division

Patiala House Annexe, Tilak Margu
New Delhi, the 10th October 2019

OFFICE MEMORANDUM

Subject: Issue of passports to applicants against whom criminal case are pending before a court of law in India.

Reference is invited to Notification No. GSR 570 (E) dated 25.08.1993 regarding issuance of passports to applicants who have criminal proceedings pending against them and whose applications would attract the provisions of clauses (f) of sub-section (2) of Section 6 of the Passports Act, 1967.

2. GSR 570 (E) dated 25.08.1993 is reproduced below for reference:

GRS 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. GSR 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 for 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;

(iv) 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.

3. It may be noted that applicants may be refused passports only on grounds mentioned under Section 6 (2) of the Passports Act, 1967. Section 6 (2) (f) of the Act states that the passport authority shall refuse to issue a passport or travel document to an applicant 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. GSR 570 (E) dated 25.08.1993 was introduced to give relief to such



applicants against whom criminal proceedings are pending before any Court of law in India but who may need to travel abroad for some urgent business. With an undertaking under GSR 570(E) and an order from the Court, an applicant could be issued a short validity passport of one year validity for the period specified by the Court.

4.It has been noticed that there are an increasing number of references being received regarding passport applications attracting Section 6 (2) (f). It has also been brought to Ministry's notice that there are a number of complex issues involved while processing such applications. During the proceedings in a recent court case, the Hon'ble High Court of Delhi in W.P.(CRL.) No.2844/2018/CRL.M.A.48674/2018 has directed that guidelines be issued by the Ministry reiterating the procedure for processing of such applications and emphasizing that such applications need to be processed with due care and diligence.

5.In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

(i) The provisions of GSR 570 (E) may be strictly applied in all cases. GSR 570 (E) is a statutory notification and hence, forms part of the Rules. It is to be noted that as per Section 5 (2) of the Passports Act, 1967, the passport authority shall be order in writing take a decision whether to issue or refuse a passport, after making such inquiry, if any, as it may consider necessary. Moreover, Section 7 of the Passports Act, provides that a passport or travel document may be issued for a shorter period than the prescribed period if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period. Rule 12 of the Passport Rules, 1980 only states that an ordinary passport shall be in force for a period of 10 years which implies that an ordinary passport cannot be issued beyond a period of 10 years.

(ii) Whenever an applicant is submitting a 'No Objection Certificate' (NOC) from a Court of law in India, the applicant should be advised that



all respects and should mention all the pending criminal cases against the applicant. The undertaking will have a not clearly stating that if any false or incomplete information is submitted by an applicant, then his passport application is liable to be rejected.

(iii) Extant instructions clearly lay down that such applications should be processed on pre-Police Verification (PV) mode. "Pre-PV" would be mandatory in all cases of applications submitted with GSR 570 (E) to ensure that the undertaking submitted by the applicant is properly matched with the criminal cases mentioned in the Police Verification Report (PVR). Hence, such applications should not be accepted under Tatkaal nor such applications be moved to "post-PV" mode or "No-PV" mode without proper justification and approval to be recorded in writing.

(iv) If an undertaking is incomplete or misleading and the applicant is found to have suppressed details of other criminal cases against the applicant, a Show Cause Notice should be issued to the applicant and action initiated against that applicant as per provisions of Section 12 of the Passports Act, 1967. If information that an applicant has obtained a passport by making a false submission or by suppressing material facts comes to light after the passport has been issued, the passport may be impounded or revoked as per provision of Section 10 (3) (b) of the Passports Act, 1967 after following the due procedure.

(v) In case where the first police verification (PV) is 'Adverse', secondary police verification may be generated. While a secondary PV is generated, it should be accompanied by a detailed letter seeking clarification regarding the pending criminal cases against the applicant and the status of these cases. Apart from generating secondary PVR, the passport officers may, if considered necessary, call for discreet enquiry through the police authorities by sending the court order submitted by the applicant or even seek verification from other government agencies/departments, as the case may be.

(vi) In case where the secondary Police Verification is also 'Adverse', it may be examined whether the details brought out in the police



applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.

(vii) If the details given in the police report and the undertaking submitted by the applicant are matching, then the 'No Objection Certificate' issued by a Court of law submitted by the applicant would take precedence over any 'Adverse' report submitted by the police. In such cases, the 'Adverse' report may be overruled with the written approval of the Passport Officer.

(viii) If the details given in the PVR and the undertaking submitted by the applicant are at variance, then a notice may be issued to the applicant calling for clarification and advising the applicant to submit details of all pending criminal cases as well as to submit a revised No Objection Certificate (NOC).

(ix) If it is brought to the notice of the authority that an applicant has criminal proceedings arrayed against applicant before several courts of law, then the applicant may be advised to get NOC from all the concerned court (s). Normally, the Court Order would make a mention of the cases pending against the applicant as well as the prayer made by the applicant. This may be examined along with the undertaking submitted by the applicant and complaints or other court orders, if any, that have been received against the applicant.

(x) It may noted that GSR 570(E) only exempts and applicant from the operation of Section 6 (2) (f) and none of the other sub-sections of Section 6 (2) of the Passports Act, 1967.

(xi) A revised Undertaking under GSR 570(E) is attached at Annexure 'A'.

(xii) Passport Officers may issue an internal SOP along the above lines so that there is no confusion in handling of applications that would attract provisions of section 6(2)(f) of the Passports Act, 1967.

6.The above instructions may be noted for

<https://hcservices.ecourts.gov.in/hcservices> for compliance with immediate effect.



UNDERTAKING

(to be submitted on plain paper as per provisions of GSR-570(E) dated 25.08.1993)

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I am applying/have applied for passport with the following details:-

(a) Name :.....
(b) Date of Birth :.....
(c) Father's Name :.....
(d) Mother's Name :.....
(e) Present Address :.....
(f) File No./ARN No. :..... Date:.....

2.The Criminal case(s) with following details is/are pending against me:

(if more than one case is pending, details of all cases may be provided.

Additional sheet giving complete information may be attached)

(a) Case No. :.....
(b) Name of Court :.....
(c) Details of Investigating Agency
(Please provide details of Police station
Investigating Officer, etc.) :.....
(d) Last date of hearing :.....
(e) Next date of hearing :.....

3.I hereby undertake that I shall, if required by the Court concerned, appear before it at any time during the continuance in force of the passport so issued.

4.I am aware that it is an offence under the Passports Act, 1967 to furnish any false information or to suppress any material information with a view to obtaining a passport or any other travel document.

5.The above information given by me in this undertaking and enclosures is true and I am solely responsible for its accuracy.

(Signature of the Passport applicant)

Name.....
Mobile No.....

Date:.....

<https://hcservices.courts.gov.in/hcservices/>.....



4. So the learned counsel appearing for the petitioners would submit that this circular will apply only in cases where charge sheet has been filed and the accused persons are facing trial. But these cases are concerned, only they are in the investigation stage and final report has not been filed so far. So, this circular will not apply the following earlier order, which has been passed by this court. So, the lookout notice must be cancelled and recalled.

5. No doubt that on the previous occasion, even though this court has passed such an order, recalling the lookout notice, but frequent violation of the bail conditions was brought to notice of this court by the persons, who are seeking job, education, and other avocations in abroad or foreign countries. When this was brought to the notice of this court, I was of the considered view that the above said circular must also be made applicable to the facts of those cases, where investigating is pending.

6. In a similar matter, this court has made an observation that purpose of avoiding future problem, not only to the accused persons, but also to the investigating agency, the petitioners, who seek permission to visit abroad or for any reason, must get proper permission from the concerned jurisdictional Magistrate Court, where FIR is pending. Because the accused persons are bailed to the particular jurisdictional Court. So the same principle was also adopted subsequently also. So, the contention on the part of the petitioners that the earlier orders must be followed by this court may not be acceptable for the reasons stated above. On the permission being granted by the competent jurisdictional Court, the lookout notice that has been issued against the petitioners will automatically deemed to have been cancelled, inoperative and ineffective.

7. So these petitions are disposed of with the following directions:-

(1) Within 15 days from the date of receipt of a copy of this order, the petitioners must file appropriate permission petitions before the concerned jurisdictional Magistrate Court, where FIR is pending, seeking permission by setting out the facts and circumstances and necessity of their purpose of visiting abroad by producing proper documents;

(2) On such petitions being filed, the concerned jurisdictional Magistrate Court is hereby directed to consider the same, on merits and pass orders within 15 days thereafter;



(3)At the time of passing orders, the concerned jurisdictional Magistrate Court may also take into consideration the right of the petitioners to go abroad to pursue their avocation, which is a fundamental right and the Court can also impose conditions for ensuring their appearance at the time of investigation and trial. On the order being passed, the lookout notice that has been issued against the petitioners will automatically deemed to have been cancelled and non-existence.

(4)The concerned authorities may act upon the order that has to be passed by the concerned jurisdictional Magistrate Court.

With the above aid observation these writ petitions shall stand **disposed of**. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.The Chief Immigration Officer,
Immigration Department,
Madurai Airport,
Madurai.
- 2.The Superintendent of Police,
O/o.The Superintendent of Police,
Ramanathapuram District.
- 3.The Inspector of Police,
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4.The Judicial Magistrate,
Kadaladi,
Ramanathapuram District.

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PS (CO)

RS/PM (17.11.2021) 10P 5C