



W.P.(MD)No.7873 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.11.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.7873 of 2022

Eugine Jeyaraj

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.

3.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent to issue passport against the petitioner's application vide file No.MD2063815843321, dated 20.12.2021.

For Petitioner	: Mr.K.P.Narayanakumar
For R1	: Mr.K.Asok Kumar Ram
For R2 and R3	: Mr.B.Thanga Aravindh
	Government Advocate (Crl.Side)



W.P.(MD)No.7873 of 2022

WEB COPY

ORDER

This Writ Petition has been filed to direct the first respondent to issue passport against the petitioner's application vide file No.MD2063815843321, dated 20.12.2021.

2.The petitioner filed an application before the first respondent seeking passport on 20.12.2021. The first respondent on appreciation of the said application, issued a show cause notice in respect of the adverse police report against the petitioner due to his involvement in Crime No.287 of 2020, now pending on the file of the third respondent. The petitioner submitted his detailed explanation in person as well through registered post on 08.04.2022. The application of the petitioner is pending before the first respondent without any development.

3.The learned counsel for the petitioner submitted that the petitioner's family is depending upon the petitioner for livelihood. He seeks passport to go to abroad for his job. The first respondent issued a show cause notice to the petitioner seeking explanation from the petitioner about his involvement of the case in Crime no.287 of 2020. The learned counsel for the petitioner submitted that the defacto complainant in that case is the neighbor of the



W.P.(MD)No.7873 of 2022

petitioner and there was some previous enmity between them. Due to some personal vengeance, the false case has been registered against the petitioner and his family members. The petitioner being an illiterate did not know the consequences of the registration of a case. He was under the impression that the said case has been closed after enquiry, since he has not even received any notice about the investigation of the case

4.He further submitted that investigation of the said case has not been completed and the same is pending in the FIR stage only. Though in the show cause notice, it has been stated that investigation in this case has been completed and charge sheet has also been filed, the petitioner did not receive any documents with regard to the charge sheet. Hence, he prayed for allowing this writ petition.

5.The learned counsel for the Petitioner produced a decision of this Court in the case of W.Jaihar William and others .vs. The State of Tamil Nadu and others reported in 2014(2) CWC 684, wherein, it has been observed as follows:

"8.....the applications submitted by the Petitioners for passport were not considered by the third respondent for the reason that FIRs are pending against them. The Superintendent of Police , Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the Petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project.



W.P.(MD)No.7873 of 2022

So far as the Petitioner in W.P(MD)NO.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 and 307 IPC. Since the FIRs are pending against the Petitioners, the third respondent has not considered the applications of the Petitioners, by placing reliance on section 6(2)(f) of the Passports Act, 1967. Section 6(2)(f) reads as follows:

6. Refusal of passports, travel documents, etc---(i)....

(2) subject to the other provisions of this Act, the Passport Authority shall refuse to issue a passport or travel document for visiting any foreign country under Clause © of sub section (2) of Section 5 on any one or more of the following grounds and on no other ground namely:

(a) and (b).....

(f) that proceedings in respect of an offence alleged to have been committed by the Applicant are pending before the Criminal Court in India"

It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of Criminal Proceedings in respect of the offences alleged to have been committed by the Applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the Applicant, as stipulated under Section 190 of Cr.P.C, it can be construed as "proceedings pending before the Court".

6. The learned Government Advocate (Crl.Side) appearing for appearing

for the respondents 2 and 3 submitted that the investigation in Crime No.287



W.P.(MD)No.7873 of 2022

of 2020 has been completed and charge sheet has also been filed on 15.08.2020 and the same is yet to be taken on file. Since one of the accused was deleted from the charge sheet, summons have been issued to the defacto complainant seeking his objections, if any, and awaiting for the same. Hence, the delay has been occurred in completing the process of taking cognizance.

7. Heard the learned counsel appearing on either side.

8. It is seen that the case was registered in the year 2020. Till date, no charge sheet has been filed. Though it is stated that charge sheet has been filed even in the year 2020 before the concerned Judicial Magistrate, the same is not yet taken on file. Deletion of one of the accused from the charge sheet cannot be a reason for keeping the case pending. Hence, the respondent police is directed to complete the process of taking cognizance and proceed further in accordance with law.

9. This Court and various High Courts had allowed the Writ Petition of this nature., on the ground that unless and until the Judicial Magistrate takes cognizance of the offence, the respondents/Officials cannot mechanically refuse to issue passport to the parties, stating that FIR is pending and that mere pendency of FIR cannot be construed as pendency of criminal



W.P.(MD)No.7873 of 2022

proceedings and the same cannot be a bar for issuance of passport to the parties concerned.

10.In view of the above settled position of law, this Court directs the first respondent to consider the application submitted by the Petitioner in Application No.MD2063815843321, dated 20.12.2021, if it is otherwise in order and issue appropriate orders regarding issuance of passport to the Petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

11.With the above direction, the Writ Petition stands disposed of. No costs.

10.11.2022

Index : Yes/No
Internet : Yes/No
ta



WEB COPY



W.P.(MD)No.7873 of 2022

V.BHAVANI SUBBAROYAN, J.

ta

To

- 1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai.
- 2.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.
- 3.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

Order made in
W.P.(MD) No.7873 of 2022

10.11.2022