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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.14010 & 15143 of 2022

and

WMP(MD)No.10833 of 2022

S.P.Udayakumar

... Petitioner in both cases

v.

1.The Government of India
Ministry of External Affairs,
Passport Office, Bharathi Ula veethi,
Race course road,
Madurai – 625 002.

...1st respondent in both cases

2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

...2nd respondent
in WP(MD)No.15143 of 2022

Prayer in WP(MD)No.14010 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorariified Mandamus to call for the records pertaining to impugned proceedings in 1200025_CPC_MDU dated 16.06.2022 on the file of the Respondent and quash the same as illegal and consequently directing the respondent to re-issue the passport to the petitioner in application No.MD2074173993122 within the time period stipulated by this Court.



Prayer in WP(MD)No.15143 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorariified Mandamus to call for the records pertaining to impugned proceedings in Letter Ref.No.SCN/312926957/22 dated 06.07.2022 on the file of the Respondent No. 1 and quash the same as illegal and consequently directing the Respondent No.1 to re-issue the passport to the petitioner in application No. MD 2074173993122 within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mrs.L.Victoria Gowri,
Assistant Solicitor General of India for R1

Mr.M.Prakash,
Additional Government Pleader for R2

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner challenges the impugned communication dated 06.07.2022 issued by the first respondent. The petitioner had submitted an application for issuance of passport on 02.05.2022. To process the same, the first respondent called for police verification report. The first respondent was informed that the petitioner is involved in Crime No.231 of 2022 on the file of Kottar Police Station. Based on the same, the first respondent has called



upon the petitioner to furnish proper explanation regarding the circumstances under which he had suppressed material information in his passport application.

3.I am more than satisfied that the impugned communication deserves to be set aside. Even according to the first respondent, the application was submitted on 02.05.2022. Crime No.231 of 2022 on the file of Kottar Police Station was registered on 18.05.2022. Since registration of the criminal case is subsequent in point of time, the question of suppression cannot arise. That apart, the criminal case is pending at the FIR stage. It is well settled that unless final report has been filed and the case has been taken on file by the jurisdictional criminal court, mere pendency of a criminal case at FIR stage cannot act as an impediment for process of application for issuance of passport.

4.The petitioner is a well known public activist. He spearheaded the agitation against establishment of atomic energy plant at Koodankulam. He was implicated in a number of criminal cases in connection therewith. The Hon'ble Supreme Court in the decision reported in (2013) 6 SCC 620 (G.Sundarajan v. UOI) was pleased to observe that endeavor should be made to withdraw all the criminal cases filed against the agitators. The Government



of Tamil Nadu had also issued G.O Ms.No.758 Home (Courts -IV) Department dated 09.10.2014 withdrawing as many as 248 cases. It is true that if the criminal case has culminated in a final report and also taken on file by the jurisdictional court, one has to approach the concerned court for relief. The constitutional courts can make departure in certain cases. Activists like the petitioner will be facing cases in several courts spread all over the State. It would be causing exceptional hardship to them if they are asked to get clearance from each court. If this Court can come to the conclusion that the nature of cases is broadly political and they are not grave in nature, the High Court itself can grant relief. This is more so because, right to travel abroad is a fundamental right. The petitioner is very much having roots in India. The petitioner is definitely not going to flee. After all his arena of action is India, particularly, Tamil Nadu. When this Court is satisfied that the petitioner is not a flight risk, it can very well direct the authorities to issue passport to him. The petitioner in my view comes under such category.

5.The communication impugned in WP(MD)No.15143 of 2022 is set aside. The first respondent is directed to re-issue passport to the petitioner as expeditiously as possible subject to fulfilment of other usual formalities. WP(MD)No.15143 of 2022 is allowed. In view of the lapse of time, interference is not required in WP(MD)No.14010 of 2022 since the issue has



become infructuous. It stands closed as infructuous. No costs. Connected
miscellaneous petition is closed.

01.08.2022

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To

- 1.The Government of India
Ministry of External Affairs,
Passport Office, Bharathi Ula veethi,
Race course road,
Madurai – 625 002.
- 2.The Inspector of Police,
Kottar Police Station,
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G.R.SWAMINATHAN, J.

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