

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED 21.09.2022**

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

**W.P(MD)No.22222 of 2022**

S.Muniasamy

..Petitioner

Vs

1.The Union of India,  
Rep. by its Principal Secretary to Government,  
Ministry of External Affairs,  
Shastri Bhavan,  
New Delhi.

2.The Regional Passport Officer,  
Bharathi Ula Veethi,  
Race Course Road,  
Madurai-625 002.

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

..Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to issue the Renewal Passport of the petitioner's son Sellamuthu filed Renewal application No.22-2002808766.

|                |                                                               |
|----------------|---------------------------------------------------------------|
| For Petitioner | :Mr.M.Muniasamy                                               |
| For R1 & R2    | :Mrs.L.Victoria Gowri<br>Assistant Solicitor General of India |
| For R3         | :Mr.B.Thanga Aravindh<br>Government Advocate                  |

**ORDER**

The Petitioner has prayed for issuance of a Writ of Mandamus, directing the second respondent to issue the Renewal Passport of the petitioner's son Sellamuthu filed Renewal application No.22-2002808766.

2.Heard Mr.M.Muniasamy, learned counsel appearing for the petitioner, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India and Mr.B.Thanga Aravindh, learned Government Advocate (Crl.side), who takes notice for the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The learned counsel for the petitioner would submit that the petitioner has filed this writ petition on behalf of his son M.Sellamuthu. He would further submit that the second respondent was issued the passport to the petitioner's son, namely, Mr.M.Sellamuthu on 30.08.2012 and the same was valid up to 29.08.2022. The petitioner's son is working in private concern at Abudabi. The petitioner's son applied for Renewal of the passport and he received a communication from the Consulate General of India, Embassy (Kuwait), Abudapy to the effect that Criminal Case is pending against the petitioner's son M.Sellamuthu. On that ground, the second respondent refused to re-issue/Renewal of the passport of the petitioner's son.

4. He further submitted that in the police verification report, it was found that the Superintendent of Police, Ramanathapuram had given an adverse report, which is updated in the system informing that a criminal case in Cr.No.108/2021 registered at Kadaladi Police Station, under Section 294(b), 323 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act 2002 is pending against the petitioner's son. The petitioner submitted that now the trial against the petitioner's son M.Sellamuthu is pending. Further, the petitioner's son has suppressed the material information of criminal case pending against him, has presented re-issue of passport application No.22-2002808766 submitted at Embassy of India, Abudaby. Now, the petitioner's son accepted the case in Cr.No. 108/2021 registered against him in Kadaladi Police Station. Thereafter, investigation has been completed and the charge-sheet has been filed before the learned Judicial Magistrate, Kadalady in C.C.No.88 of 2021. The petitioner's son passport has expired on 29.08.2022 even if the petitioner's son wants to return back to India and attend the Criminal proceedings, the passport has to be renewed and only thereafter, the petitioner's son can proceed further or else the petitioner's son Sellamuthu will be liable for unauthorized stay at Kuwait country. Being left with no other alternative efficacious remedy, the petitioner constrained to file this writ petition before this Court.

5. The petitioner also annexed the Office Memorandum of Government of India, Ministry of External Affairs, PSP Division, dated 10.10.2019, wherein, certain guidelines are issued for issuance of passport.

6. The learned Government Advocate (Crl.side) appearing for the third respondent would submit that except this case, no other criminal case is pending against the petitioner's son.

7. The main ground that has been raised by the respondents while opposing the re-issue/renewal of the passport is that, criminal proceedings are pending against the petitioner's son before the learned Judicial Magistrate, Kadaladi in C.C.No.88 of 2021. According to the respondents, the petitioner has concealed the pendency of the criminal proceedings and therefore, he is not entitled for the re-issue/renewal of the Passport. It is seen from the FIR that the complainant's son married the petitioner's daughter and the dispute between the family members. Due to the family dispute, the petitioner's son attacked the complainant with stick and she had caused simple injury and she has not went to the hospital immediately and she had taken the country treatment. The occurrence was taken place on 22.04.2021 at about 11.00 a.m., but the

complaint was given only on 23.04.2021 at about 09.00 a.m., and there is no reason to delay in lodging the complaint.

8. This Court had an occasion to deal with a similar issue in W.P. (MD) No.7056 of 2017 in the case of **N.Chandrababu vs. the Sub Inspector of Police and another**. The relevant portions in the order dated 21.04.2017 are extracted hereunder:

"3)..... At this juncture, it may be relevant to discuss the legal position with regard to the right of a person facing criminal prosecution to demand issuance of passport. To decide this issue, it may be necessary to extract the following legal provisions from the Passports Act, 1967.

'Section 5(2) of the Passports Act, 1967

On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the

passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries ; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

Section 6(2) of the Passports Act, 1967.

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 (c) of sub-section (2) of section 5 on any one or more of the following grounds, an on no other ground,

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at an time during the period of five years immediately preceding the

date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to

imprisonment for not less than two years;

(f) that proceedings in respect of an offence

alleged to have been committed by the applicant are pending before a Criminal Court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

4) For deciding the issue at hand, Section 6(2)

(f)

will be relevant. A reading of the said provisions shows that the power of the Passport Authority to refuse issuance of passport under Section 5(2)(c) is governed by Section 6(2). Thus, for any of the reasons given in Clause (a) to (i) of Section 6(2), the Passport Authorities can refuse to issue a passport in exercise of power under Section 5(2)(c). The Parliament, in its wisdom, has conferred the aforesaid power, which is administrative in nature, on the Passport Authority. The Central Government has issued the following Notification dated 25.08.1993, for regulating the exercise of power by the Passport Authority under Section 6(2 (f):

“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.G.S.R.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 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; or
- (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.

5. From a reading of the aforesaid Notification, in the

opinion of this Court, the expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the 'concerned Court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in C.C.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of Cr.P.C., has admitted Crl.O.P.(MD)No.3533 of 2017 and has granted stay of all further proceedings in C.C.No. 21 of 2015 on the file of Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the

context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy."

9. This Court also had another occasion to consider the same issue in Crl.O.P(MD) No.5068 of 2018 in **Noushad Thazhaith vs. State,**

**rep.by the Deputy Superintendent of Police and another.** The

relevant portions of the order are extracted hereunder:

"The petitioner is facing trial in PRC No.2 of 2013 before the Judicial Magistrate No.III, Coimbatore for the offences under Section 4 (a) and 6 r/w 4(G) of the Explosive Substance Act, 1908. The petitioner has filed a quash application in Crl.O.P.No.3532 of 2018 challenging the prosecution and the same is pending before this Court. The petitioner is the holder of Indian Passport bearing No. H5939876 issued at Kozhikode, Kerala on 09.09.2009 valid upto 08.09.2019.

2.It is the case of the petitioner that he has business interest in the Middle East and that he has been going abroad frequently on valid visa. It is his further case that the pages in his passport got exhausted and therefore, when he applied for a fresh passport, the Passport Authorities directed him to obtain necessary permission under Section 6(2)(f) r/w Section 22 of the Passports Act r/w Notification No. GSR 570 E dated 25.08.1993. Hence, the petitioner has filed the present application for permission.

3.Heard Mr.N.Manokaran, learned counsel for the petitioner, Mr.C.Raghavan for the respondent Police and Mr.N.Vijaya Baskar for 2nd respondent Passport Authorities.

4.Under normal circumstances, in a case of this nature, this Court would not grant permission for the petitioner to go abroad. However, it is seen that this petitioner has been granted permission earlier by the learned Judicial Magistrate No.III, Coimbatore vide order dated 03.11.2015 in CMP.No.4280/2015 and by this Court in Crl.O.P.No.22055/2016 dated 10.02.2017. The learned Judicial Magistrate No.III, Coimbatore in his order dated

03.11.2015 has noted that the petitioner has been appearing regularly before the Court from 2013 onwards and because of the failure of the prosecution to summon the co-accused, the Magistrate has not been able to commit the case to the Court of Sessions. Only this aspect has weighed in the mind of this Court for positively considering the request of the petitioner. The law with regard to grant of permission for renewal of passport has been settled by this Court in N.Chandrababu vs. Sub Inspector of Police Palakkarai Police Station, Trichy [2017 (3) CTC 493] and it may not be necessary to recapitulate the legal propositions.

5.Suffice it to say that, when a criminal case is pending before a Court, passport can be issued or renewed only on the basis of production of orders from the concerned Court permitting the applicant to depart from India. In notification NOGSR 570 B, the conditions under which a passport or travel documents could be issued has been enumerated. Taking into consideration the earlier conduct of the petitioner, as noted by the Judicial Magistrate No.III in his order dated 03.11.2015, this Court grants permission to the petitioner to depart from India and return within a period of eight months from the date of this order. Exemption is granted to the petitioner from the operations of the provisions of Clause (f) sub section (2) of section 6 of the Passports Act, for a period of eight months from the date of this order. The petitioner shall abide by the conditions set out in the notification dated 25.08.1993".

The above order was also followed in the subsequent order passed in CrI.O.P.No.7220 of 2019 dated 07.06.2019.

10. Usually, under these circumstances, the Court cannot grant permission for the petitioner to go abroad, but here is the case, after registering the FIR, the petitioner went to Abudaby for joining his job.

11. Taking into consideration the facts and circumstances of the case and also in order to strike a balance to ensure that the Passport is renewed for a limited period and the petitioner is also permitted to take necessary steps to clear himself from the criminal case, this Court is inclined to allow the Writ Petition with the following directions:-

(a) The petitioner is directed to make a representation to the Consulate General of India, Indian Embassy at Abudaby along with a copy of this order;

(b) Immediately on receipt of such representation, the Passport of the petitioner shall be re-issued/renewed for a period of two years;

© On such re-issuance/renewal, the petitioner shall come over to India and take immediate steps to participate in the criminal proceedings and work out his remedy and defend himself in the case;

(d) The petitioner shall also file a memo before the concerned Court, where the criminal case is pending and bring to the notice of the said Court, the orders passed in this writ petition; and

(e) If in case the criminal case does not come to an end within the period for which the passport has been re-issued/renewed, the petitioner shall get the necessary permission only from the concerned Court in line with the notification issued by the Government of India through the Ministry of External Affairs in G.S.R.298(E) dated 14.04.1976.

12.With the above directions, the Writ Petition stands disposed of.

No costs.

**21.09.2022**

Index : Yes/No

Internet:Yes/No

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To

- 1.The Principal Secretary to Government,  
Union of India,  
Ministry of External Affairs,  
Shastri Bhavan,  
New Delhi.
- 2.The Regional Passport Officer,  
Bharathi Ula Veethi,  
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**V.BHAVANI SUBBAROYAN,J**

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