



W.P.(MD)No.22525 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.10.2022

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THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.22525 of 2022

V.Arunkumar

.. Petitioner

Versus

1.The Regional Passport Officer,
Office of the Regional Passport Officer,
Ministry of External Affairs,
Madurai.

2.The Superintendent Enquiry Officer,
The Regional Passport Office,
Madurai Bharathi Ula Veethi,
Race Course Road,
Madurai.

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

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to issue passport to the petitioner on his application, dated 13.06.2022, pending in File No.MD01C5041760722, based on the petitioner's representation dated 10.09.2022, sent to the respondents 1 and 2, within a time frame.

For Petitioner : Mr.L.Prabhu

For Respondents 1 and 2 : Mrs.L.Victoria Gowri
Assistant Solicitor General of India



W.P.(MD)No.22525 of 2022

For 3rd Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. side)

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ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to issue passport to him based on his application, dated 13.06.2022, pending in File No.MD01C5041760722, and the representation dated 10.09.2022, within a time frame.

2.According to the petitioner, he was issued with a Passport bearing No.K4331912, dated 27.02.2013, which is valid upto 26.02.2023. He studied Bachelor of Engineering and already worked at Saudi Arabia from the years 2014 to 2016. In order to propose to go to Saudi Arabia again, he submitted an application for renewal of passport, dated 02.06.2022, through online and the same was taken on file, bearing File No.MD01C5041760722, dated 13.06.2022, by the first respondent. Subsequently, he received a clarification notice from the first respondent, vide Letter Ref.No.SCN/312809035/22, dated 16.06.2022, wherein it has been stated that an F.I.R. in Crime No.18 of 2019, dated 15.01.2019, for the offences under Sections 279 and 337 of I.P.C., on the file of the third respondent is pending against him and he was directed to give explanation to the second respondent within a period of 30 days from the date of receipt of the notice with regard to his involvement in the said criminal case and cancelled the passport.



W.P.(MD)No.22525 of 2022

3.Further, according to the petitioner, he has been falsely implicated in the said case alleging that he drove his car in a rash and negligent manner and turned the car on the right side of the road without switching on the indicator, due to which, the de-facto complainant along with his brother-in-law, who came behind the car in a two wheeler, hit and dashed by the said car and suffered with injuries. According to the petitioner, he turned his car after having switched on the indicator, but the de-facto complainant and his brother-in-law came in a two wheeler in a rash and negligent manner and thereby, hit against the car and damaged the same. Subsequently, he moved the third respondent Police for preferring complaint as against the de-facto complainant and his brother-in-law, but the third respondent without registering the case based on the complaint of the petitioner, registered the F.I.R. as against the petitioner based on the complaint given by the de-facto complainant. The fact remains that one Rajendran, who drove the two wheeler and the de-facto complainant was the pillion rider and both came in an inebriated mood and they must be punished on the ground of drunk and drive. Subsequently, the petitioner was released on furnishing own bond by the third respondent Police, since the offences are bailable in nature.

4.The petitioner was falsely implicated as sole accused in the said case.

Moreover, when he applied for renewal of passport, he was not aware the fact



W.P.(MD)No.22525 of 2022

that the F.I.R. is still pending against him and he was on the fond hope that it might have been closed as 'mistake of facts' in view of non-filing of charge sheet even after a period of 3 ½ years from the date of registration of the F.I.R., dated 15.01.2019. The third respondent Police did not choose to complete the investigation in the case and did not file final report till date. It is mandatory duty upon the third respondent Police to file final report within a period of three months from the date of registration of the case. Further, it is needless to mention that there is no bar for issuance of passport merely on the ground of pendency of F.I.R. and the same was reiterated by the Hon'ble Supreme Court as well as this Court in umpteen numbers of cases. Except the above-mentioned case, no other case is pending against the petitioner. At present, he is in dire need of proceeding to abroad for the purpose of earning in order to save his family. Under the said circumstances, having no other alternative and efficacious remedy, the petitioner has approached this Court by way of filing the present Writ Petition for the relief stated supra.

5.The learned counsel for the petitioner submitted that the first respondent can reject the application for issuance of passport when a case is pending before the competent Court of law. In the case on hand, no case is pending before the competent Court of law. The case is pending at the stage of F.I.R. only. Until the charge sheet has been filed, the Magistrate cannot be



W.P.(MD)No.22525 of 2022

said to have taken cognizance of any offence. Under the said circumstances, the oral order of the first respondent refusing to issue passport by showing the pendency of the F.I.R. is contrary to law and not sustainable.

6.The learned Assistant Solicitor General of India appearing for the respondents 1 and 2 submitted that the Writ Petition is premature, as the petitioner's application was neither rejected nor closed, as on date and the petitioner was asked to furnish his explanation to the second respondent regarding the criminal case. Further, the first respondent could not proceed with the issuance of passport on the ground that FIR has been registered against the petitioner in Crime No.18 of 2019 for the offences under Sections 279 and 337 of IPC.

7.The learned Government Advocate (Crl. side) appearing for the third respondent Police submitted that the investigation has already been completed and the charge sheet is yet to be filed before the concerned jurisdictional Court and hence, the authorities cannot issue passport to him and only after the completion of trial, the first respondent can decide the issue and pass appropriate orders.



W.P.(MD)No.22525 of 2022

8. In support of his contention, the learned counsel appearing 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. 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:*



W.P.(MD)No.22525 of 2022

(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 offences 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".

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 persons, stating that FIR is pending and that mere pendency of FIR cannot be construed as pendency of criminal proceedings and the same cannot be a bar for issuance of passport to the persons 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.MD01C5041760722, dated 13.06.2022, if it is otherwise in



W.P.(MD)No.22525 of 2022

order and issue appropriate orders regarding issuance of passport to the petitioner, within a period of six 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.

Index : Yes/No
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28.10.2022

To

- 1.The Regional Passport Officer,
Office of the Regional Passport Officer,
Ministry of External Affairs,
Madurai.
- 2.The Superintendent Enquiry Officer,
The Regional Passport Office,
Madurai Bharathi Ula Veethi,
Race Course Road,
Madurai.
- 3.The Inspector of Police,
Uchipuli Police Station,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P.(MD)No.22525 of 2022

V.BHAVANI SUBBAROYAN, J.

smn2

Order made in
W.P.(MD)No.22525 of 2022

28.10.2022