



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.10.2022

CORAM

WEB COPY

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.22532 of 2022

Ajithkumar, S/o.Ganesan

.. Petitioner

Versus

1.The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillainagar 7th Cross,
Trichy-620018.

2.The Inspector of Police,
Nagudi Police Station,
Pudukottai District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first respondent to issue passport to the petitioner on the basis of his application, dated 13.09.2022, pending in File No.TR2064579748322, before the first respondent, by accepting the petitioner's explanation, within a time frame.

For Petitioner : Mr.T.Leninkumar

For 1st Respondent : Mrs.L.Victoria Gowri
Assistant Solicitor General of India

For 2nd Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. side)

ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the first respondent to issue passport to him on the basis of his application, dated 13.09.2022, pending in File No.TR2064579748322, before the first respondent, by accepting his explanation, within a time frame.

2.According to the petitioner, he applied for Passport on 12.09.2022 before the first respondent. In the application from, he has specifically mentioned that a case in Crime No.428 of 2020 for the alleged offences under Sections 294(b) and 324 of IPC, on



the file of the second respondent Police, is pending. The first respondent having scrutinized the application, withhold the same as if the F.I.R. is pending against the petitioner. The petitioner appeared before the first respondent on 13.09.2022 and submitted his explanation orally that the above said case is pending at the stage of F.I.R., and mere pendency of the F.I.R. would not disqualify the petitioner from getting passport. However, the first respondent was not convinced with the petitioner's reply and he orally informed the petitioner that unless he produces the judgment of acquittal, he would not issue passport to him.

3.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 only at the stage of F.I.R. only. Until the charge sheet has been filed, the Magistrate cannot be 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.

4.The learned Assistant Solicitor General of India appearing for the first respondent 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 the court order regarding the criminal case before the first respondent for clarification. 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.428 of 2020 for the offences under Sections 294(b) and 324 of IPC.

5.The learned Government Advocate (Crl. side) appearing for the second respondent Police submitted that the overt act attributed against the petitioner in the above said crime is very serious in nature and 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.

6.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 ,



WEB COPY



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:

(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''.

7. 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.

8. 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. TR2064579748322, dated



13.09.2022, if it is otherwise in 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.

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

Sd/-

Assistant Registrar (C.O)

// True Copy //

/11/2022

Sub Assistant Registrar (CS)

Smn2

To

1. The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillainagar 7th Cross,
Trichy-620018.
2. The Inspector of Police,
Nagudi Police Station,
Pudukottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-50011[F] dated 18/10/2022)

W.P. (MD) No.22532 of 2022
17.10.2022

AMS (31.10.2022) 4P 5C