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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 11.10.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.22757 of 2022

T.Thivakar

..Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillai Nagar 7th Cross,
Tiruchirappalli – 620 018.

2.The Inspector of Police,
Pattukkottai Taluk Police Station,
Thanjavur 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 first respondent to issue passport to the Petitioner vide application No.TR1064392952322, dated 12.7.2022 within the time frame fixed by this Court.

For Petitioner :Mr.V.Muthukamatchi

For Respondent-1 :Ms.L.Victoria Gowri
Asst.Soliciter General of India

For Respondent-2 :Mr.B.Thanga Aravindh
Govt.Advocate(Crl.Side)

ORDER

The Petitioner has filed this Writ Petition seeking issuance of a Writ

of Mandamus directing the first respondent to issue passport to the



Petitioner vide application No.TR1064392952322, dated 12.7.2022 within the time frame fixed by this Court.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The case of the Petitioner is that due to family situation and to overcome the financial deficiency, the Petitioner has planned to go abroad for work and hence submitted an application for issuance of passport to the first respondent and his application number is TR1064392952322, dated 12.7.2022. In respect of the same, the first respondent called for an explanation from the second respondent Police and the second respondent sent a Police Verification Report stating that the Petitioner is an accused in a case in Crime No.590 of 2021 under Section 21(i) of the Mines and Minerals Act and Section 379 of IPC. The second respondent has not filed any final report in the above FIR and the same is pending at the investigation stage. While-so, the first respondent sent a notice to the Petitioner to appear and explain about the criminal case in his office.The Petitioner personally appeared before the first respondent, clarify about the criminal case and requested for issuance of a passport. But the first respondent did not consider the Petitioner's explanation.Mere pendency of criminal case will not be a bar for issuance of passport. Hence the

Petitioner has filed this Writ Petition for the relief stated supra.



4.The learned Assistant Solicitor General of India appearing for the first respondent would submit that the Writ Petition is premature, as the Petitioner's application was neither rejected nor closed, as on date. The Petitioner was asked to appear before the first respondent for clarification about the pendency of the criminal case registered against him and the Petitioner did not appear before the authorities, but had filed the present Writ Petition. 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.590 of 2021 under Section 21(i) of the Mines and Minerals Act and Section 379 of IPC.

5.The learned Government Advocate(Crl.Side)appearing for the second respondent Police would submit that the Petitioner has been charge-sheeted in a criminal case and that the crime being a heinous crime and hence, the authorities cannot issue passport to him.The case is in preliminary stage.The Petitioner is under criminal investigation and only after the completion of trial, the first respondent can decide the issue and pass appropriate orders.

6.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. 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".



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 parties, 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 parties 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.TR1064392952322, dated 12.7.2022, 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.

11.10.2022

Index : Yes/No

Internet:Yes/No



To

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V.BHAVANI SUBBAROYAN,J
vsn

ORDER MADE IN
W.P(MD)No.22757 of 2022

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