



W.P(MD)No.24792 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.24792 of 2022

M.Mohamedfiyas

..Petitioner

Vs

1.The Passport Officer,
Regional Passport Office,
Bharathi Ula Veedhi,
Race Course Road,
Madurai.

2.The Inspector of Police,
Sakkottai Police Station,
Sivagangai 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 based on his file No.MD1064388489722, dated 11.07.2022.

For Petitioner :Mr.P.Aju Tagore

For Respondent-1 :Ms.L.Victoria Gowri
Deputy Solicitor General of India

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



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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 based on his file No.MD1064388489722, dated 11.07.2022.

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

3.The learned counsel appearing for the petitioner would submit that on 11.07.2022 the petitioner applied a Passport before the first respondent through online in File No.MD1064388489722 along with necessary documents demanded by the first respondent. After receipt of his passport application, the first respondent forwarded the same to the second respondent for verification. After the verification, the second respondent sent the adverse verification report against him to the first respondent in which they stated that Cr.No.226 of 2019 under Sections 147, 148, 294(b), 323, 324 and 506(ii) IPC is pending before the second respondent is in NTF (Non Taken on File) Stage. Hence, the first respondent sent a notice to him on 04.08.2022 seeking explanation about the case pending against him before the second respondent and the first respondent asked him to appear before them to produce proper



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clarification/explanation for the same and submit all original documents within 30 days of receipt of the letter. After receipt of the above said notice from the first respondent, the petitioner appeared before him on 11.08.2022 in person and produced the documents demanded by them and made a representation on the same day itself to issue the passport. But the first respondent has not taken any action on his passport application. The petitioner was falsely implicated in this case and he has not involved in any criminal case. Now, he need a passport for obtaining the Visa in abroad for going to job. The criminal case registered against the petitioner by the second respondent is not grave in nature and it is not covered under the Passport Act to stop the issuance of Passport to him by the first respondent. In this situation issuance of passport to him no way affect the sovereignty of our country. Hence the Petitioner has filed this Writ Petition for the relief stated supra.

4. In support of the case, the learned counsel appearing for the petitioner relied on the judgment of this Court in ***Jenifer William vs. Regional Passport Officer, Regional Passport Office, Race Course Road, Madurai and another*** reported in ***(2020) 3 MLJ (Crl) 122.***

5.The learned Deputy Solicitor General of India appearing for the first respondent would submit that the Writ Petition is premature, as the



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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 the petitioner is having 7 previous cases.

6.The learned Government Advocate(Crl.Side)appearing for the second respondent Police would submit that the Petitioner has involved in seven criminal cases. Out of 7 cases, three cases are charge-sheeted, that the crime being a heinous crime and his name is referred to history sheet and hence, the authorities cannot issue passport to him. The present case registered against the petitioner 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.

7. The judgment relied on by the learned counsel for the petitioner is not relevant to the facts of the present case as the respondent has referred the petitioner as a history sheeted.



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8. 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

© 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 © of sub-section



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(2) of section 5 on any one or more of the following grounds,
as 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 or 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;”



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9. 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.

10. In view of the above facts, this Court directs the first respondent to consider the application submitted by the Petitioner in Application No. MD1064388189722, dated 11.07.2022 and pass appropriate orders on merits and in accordance with above provisions and law stated supra as expeditiously as possible.

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

02.12.2022

Index : Yes/No
Internet: Yes/No
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To

- 1.The Passport Officer,
Regional Passport Office,
Bharathi Ula Veedhi,
Race Course Road,
Madurai.
- 2.The Inspector of Police,
Sakkottai Police Station,
Sivagangai District.



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V.BHAVANI SUBBAROYAN,J
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ORDER MADE IN

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