



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 07.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.25079 of 2022
and
W.M.P(MD)No.19176 of 2022

Allirani

..Petitioner

Vs

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

2.The Sub-Inspector of Police,
Mudukulathur Police Station,
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 first respondent to reissue the Petitioner's passport bearing No.H0350794, dated 16.09.2008 based on the Petitioner's representation dated 3.10.2022 within a time frame fixed by this Court.

For Petitioner :Mr.D.Anbarasu

For Respondent-1 :Mr.B.Narayan Ram

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

ORDER

<https://www.mhc.tn.gov.in/judis> The Petitioner has filed this Writ Petition seeking issuance of a Writ



of Mandamus directing the first respondent to reissue the Petitioner's passport bearing No.H0350794, dated 16.09.2008 based on the Petitioner's representation dated 3.10.2022 within a 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 the Petitioner had already applied for passport and was issued with a passport, after verifying the records. Thereafter, the Petitioner applied for renewal of passport in File No.MD 1074537910522. While-so, the first respondent sent a communication, dated 12.09.2022 calling for explanation regarding the adverse Police Verification Report in respect of Crime No.44 of 2021 registered under Section 160 of IPC, on the file of the second respondent within a period of thirty days from the date of receipt of the said letter/communication, dated 12.09.2022. The learned counsel would further submit that it is a petty offence and till now, the FIR lodged against the Petitioner has not been charge sheeted and that the mere pendency of an FIR is not a bar for reissuance of a passport.In this regard, the Petitioner has sent a representation to the first respondent seeking re-issuance of passport on 3.10.2022. Since the same was not considered, the Petitioner has filed this Writ Petition, for the relief stated



supra.

4.The learned Government Advocate(Crl.Side)appearing for the second respondent Police would submit that the Petitioner has committed only a petty offence for the crime punishable under Section 160 of IPC and that the Petitioner's representation submitted in this regard will be considered on merits and in accordance with law, within the time stipulated by this Court. He would further submit that the Petitioner has no previous bad antecedents of similar nature.

5.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".

6. 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 re-issuance of passport to the parties concerned.

7. 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.H0350794, dated 16.09.2008, if it is otherwise in order, based on the Petitioner's representation, dated 3.10.2022 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.

8.With the above direction, the Writ Petition stands disposed of. No costs.Consequently, connected Miscellaneous Petition is closed.

07.11.2022

Index : Yes/No

Internet:Yes/No

vsn
To

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V.BHAVANI SUBBAROYAN,J
vsn

ORDER MADE IN
W.P(MD)No.25079 of 2022



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