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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.25100 of 2022
and
W.M.P(MD)No.19197 of 2022

Arun Prasath

..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.J 8823209, dated 1.11.2011 based on the Petitioner's representation dated 3.10.2022 within the time frame fixed by this Court.

For Petitioner :Mr.D.Anbarasu

For Respondent-1 :Mr.B.Narayanan Ram

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 reissue the Petitioner's



passport bearing No.J 8823209, dated 1.11.2011 based on the Petitioner's representation, dated 3.10.2022 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 the Petitioner was already issued with passport by the first respondent after verification of the records. Thereafter, the Petitioner had applied for reissuance of passport and the same was taken on file in File No.MD 1074537924123.Further, the Petitioner was issued with a communication by the first respondent on 12.09.2022 calling for explanation regarding the adverse police verification report for the involvement of the Petitioner in Crime No.l44 of 2021 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 letter, dated 12.09.2022. After receiving the communication from the first respondent, the Petitioner has submitted a representation, dated 3.10.2022 in this regard. Since the same has not been considered by the first respondent, the Petitioner has filed the present 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 punishable under Section 160 of IPC and further, the Petitioner has no previous antecedents of similar nature and hence, his request for reissuance of passport will be considered in the manner known to law, within the time limit prescribed by this Court.

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.J8823209, dated 1.11.2011, 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.

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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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2. The Sub-Inspector of Police,
Mudukulathur Police Station,
Ramanathapuram District.



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V.BHAVANI SUBBAROYAN,J
vsn

ORDER MADE IN
W.P(MD)No.25100 of 2022



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