



W.P.(MD).No.25349 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.25349 of 2022

Sathish Kumar

... Petitioner

vs.

1.The Regional Passport Officer,
Regional Passport Office,
Thiruchirappalli,
New Municipal Complex,
Thillai Nagar 7th Cross,
Thiruchirappalli.

2.The Inspector of Police,
Aaravayal Police Station,
Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to renew and re-issue the petitioner's passport No.J7698742, within a stipulated time that may be fixed by this Court.

For Petitioner	: Mr.G.Hariharan
For R1	: Mr.L.Victoria Gowri Assistant Solicitor General of India
For R2	: Mr.B.Thanga Aravindh Government Advocate(Crl.side)



W.P.(MD).No.25349 of 2022

WEB COPY

ORDER

This writ petition has been filed for issuance of a Writ of Mandamus, directing the 1st respondent to renew and re-issue the petitioner's passport No.J7698742.

2. The case of the petitioner is that he has applied for renewal of passport before the first respondent on 10.06.2022. His passport application File Number is TR1074295480722. The first respondent has sent a show cause notice on 20.06.2022 and 17.08.2022 to the petitioner, stating that there is an adverse report against him from the second respondent and also instructed the petitioner to give proper information regarding the criminal case. On 17.10.2022, the petitioner appeared before the first respondent and gave representation regarding the criminal case. The second respondent registered a case against him and others in Crime No.109 of 2021, dated 25.09.2021 for the offences under Sections 147, 148, 323, 324, 341 and 506(ii) of I.P.C. But till now the second respondent has not filed a final report before the concerned Court. On 18.10.2022, he has sent a detailed representation to the first respondent



W.P.(MD).No.25349 of 2022

WEB COPY

regarding the criminal case. However, till date the first respondent did not take any action on the petitioner's representation. Hence, the present writ petition has been filed.

3. The learned Government Advocate (Crl.side) appearing for the second respondent has filed a status report stating that after investigation, the petitioner was arrayed as A2 in Crime No.109 of 2021 and final report has been filed before the learned Judicial Magistrate, Devakottai on 04.12.2021 and the same is not yet taken on file. The petitioner has suppressed the fact of pendency of crime number in his passport renewal application. Based on the police verification report containing adverse remarks, the first respondent has issued a show cause notice on 20.06.2022 and 17.08.2022.

4. The learned counsel appearing for the petitioner has 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:



W.P.(MD).No.25349 of 2022

WEB COPY

"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



W.P.(MD).No.25349 of 2022

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".

5. 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 F.I.R., is pending and that mere pendency of F.I.R., cannot be construed as pendency of criminal proceedings and the same cannot be a bar for issuance of passport to the parties concerned.



W.P.(MD).No.25349 of 2022

WEB COPY

6. In view of the above settled position of law, this Court directs the first respondent to consider the petitioner's application No.TR1074295480722, dated 10.06.2022 and pass appropriate orders, regarding renewal and re-issuance of passport, after getting explanation from the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. No costs.

21.11.2022

Index:Yes/No
Internet:Yes/No
akv

To

1.The Regional Passport Officer,
Regional Passport Office,
Thiruchirappalli,
New Municipal Complex,
Thillai Nagar 7th Cross,
Thiruchirappalli.

6/8



W.P.(MD).No.25349 of 2022

WEB COPY

2. The Inspector of Police,
Aaravayal Police Station,
Sivagangai District.



WEB COPY



W.P.(MD).No.25349 of 2022

V.BHAVANI SUBBAROYAN,J.

akv

W.P(MD)No.25349 of 2022

21.11.2022