



W.P(MD)No.26172 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.26172 of 2022

Jayabal Darmalingam

..Petitioner

Vs

1.The Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillai Nagar 7th Cross,
W.B.Road, Trichy.

2.The Inspector of Police,
Madukkur 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 a passport to the petitioner based on his application No.TR1064363101722, dated 01.07.2022 within the time stipulated by this Court.

For Petitioner :Mr.K.M.Karunakaran

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

For Respondent-2 :Mr.R.M.Anbunithi
Additional Public Prosecutor



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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 a passport to the petitioner based on his application No.TR1064363101722, dated 01.07.2022 within the time stipulated 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 applied for the issuance of passport through his application No.TR1064363101722. On receipt of his application, the first respondent issued a letter on 12.07.2022 requesting him to appear before him and give explanation about the Crime No.390/2021, on the file of the second respondent police station. Further, he appeared before the first respondent office and gave his explanation orally. He has been falsely implicated as accused in Crime No.390 of 2021 on the file of the second respondent police for the offences under Sections 379 of IPC and 21(1) MMDR Act and the same is pending for investigation. In response to his application for issuance of passport, the first respondent issued a communication in letter reference



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No.OBJ/312961473/22 dated 12.07.2022 calling upon him to furnish clarification in respect of the adverse police verification report given against him. After receipt of communication sent by the first respondent, again he visited the office of the first respondent and furnished all the particulars relating to the criminal case by enclosing the copy of the documents before the first respondent. The petitioner has sent representation on 11.10.2022 to the first respondent, but till date no action was taken. Hence the Petitioner has filed this Writ Petition for the relief stated supra.

4.The learned Deputy 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.390 of 2021 for the offences under Sections 379 of IPC and 21(1) MMDR Act.



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5.The learned Additional Public Prosecutor appearing for the second respondent Police would submit that the Petitioner has involved 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:



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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.



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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.TR1064363101722, dated 01.07.2022, 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.

25.11.2022

Index : Yes/No
Internet:Yes/No
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To

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- 2.The Inspector of Police,
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V.BHAVANI SUBBAROYAN,J
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ORDER MADE IN

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