



W.P.(MD).No.26712 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD).No.26712 of 2022

R.Ajithkumar

... Petitioner

vs.

1.The Passport Officer,
Regional Passport Office,
Madurai.

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

... Respondents

PRAYER: Writ Petition is 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, within a period as may be fixed by this Court.

For Petitioner

: Mr.S.Arunachalam

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.26712 of 2022

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ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the first respondent to issue passport to the petitioner.

2. When the matter is taken up for hearing today, the learned Government Advocate (Crl.side) appearing for the second respondent would submit that only F.I.R. has been registered against the petitioner in Crime No.129 of 2021 and no other case is pending against him.

3. The learned counsel appearing for the petitioner has produced the 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



W.P.(MD).No.26712 of 2022

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 an be construed as "proceedings pending before the Court".

4. 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.

5. In view of the above settled position of law, this Court directs the first respondent to consider the application submitted by the petitioner in File No.MDO1C5051698321, dated 01.12.2021, 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.



W.P.(MD).No.26712 of 2022

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

29.11.2022

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To

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W.P.(MD).No.26712 of 2022

V.BHAVANI SUBBAROYAN,J.

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W.P.(MD).No.26712 of 2022

29.11.2022