



W.P.(MD)No.26911 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2022

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THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) No.26911 of 2022

V.Ajith Kumar

... Petitioner

Vs.

1.The Passport Officer,
Passport Office,
Trichy.

2.The Passport Officer,
Passport Office (Passport Seva Kendra),
New No.201/7D, Old no.201/7,
Medical College Road,
Thanjavur-613 007.

3.The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam,
Thanjavur District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents 1 & 2 to issue police clearance certificate for the petitioner to travel abroad.

For Petitioner	: Mr.T.S.Mohamed Mohideen
For R1 & R2	: Mr.L.Victoria Gowri ASGI
For R3	: Mr.B.Thanga Aravindh Government Advocate



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4.The learned Assistant Solicitor General of India appearing for the first and second respondents would submit that the Writ Petition is premature, as the Petitioner's application was neither rejected nor closed, as on date. Further, the second respondent could not proceed with the issuance of clearance certificate on the ground that FIR has been registered against the Petitioner in Crime No.965 of 2021 under Sections 147, 294(b), 323 and 506(2) of IPC.

5.The learned Government Advocate (Crl.Side), appearing for the third respondent Police would submit that the Petitioner has been charge-sheeted in a criminal case and that the crime being a heinous crime and hence, the authorities cannot issue clearance certificate to him. The case is in preliminary stage. The Petitioner is under criminal investigation and only after the completion of trial, the second 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:

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".



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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 travel documents/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 travel documents/passport to the parties concerned.

8.In view of the above settled position of law, this Court directs the second respondent to consider the application submitted by the Petitioner, dated 27.10.2022, if it is otherwise in order and issue appropriate orders regarding issuance of police clearance certificate to the Petitioner, within a period of four 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.

29.11.2022

Index : Yes/No
Internet : Yes/No
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V.BHAVANI SUBBAROYAN, J.

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Order made in
W.P. (MD) No.26911 of 2022

29.11.2022