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W.P.No.13595 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.13595 of 2023

Vijayakumar Balu

.... Petitioner

Vs

1.The Regional Passport Officer
Regional Passport Office
Corporation Commercial Complex Building
Opposite to Thandumariyamman Koil
Avinashi Road, Coimbatore - 18.

2.State rep by
The Inspector of Police
Kattoor Police Station
Coimbatore.

3.State rep by
The Inspector of Police
Madukarai Police Station
Coimbatore.

4.State rep by
The Inspector of Police
Kuniamuthur Police Station
Coimbatore.

5.State rep by
The Inspector of Police
Pothanur Police Station
Coimbatore.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to consider the representation dated 20.04.2023 and permit the petitioner to travel abroad.

For Petitioner : Mr.G.K.Deepak

For Respondent : Mr.M.Sathyan, ACGSC for R1

M.Bindran
Additional Government Pleader [R2 to R5]

ORDER

The petitioner has applied for renewal of his passport on 24.03.2023, and the same came to be renewed . Thereafter, the petitioner received a show cause notice from the first respondent on 06.04.2023 as to why his passport should not be impounded and sought certain clarification on the alleged suppression of certain material information regarding pendency of certain criminal cases against him. The petitioner responded to the same and provided the information vide his communication dated 20.04.2023. The grievance of the petitioner is nothing was heard on the issue since then.

2. Mr.M.Sathyan, learned Additional Central Government Standing Counsel



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takes notice for the first respondent and Mr. M.Bindran, learned Additional

Government Pleader takes notice for respondents 2 to 5. It was submitted

by the counsel for the first respondent in his counter that after re-issuance of passport, an adverse police verification report was received from the Commissioner of Police, Coimbatore stating that the petitioner is involved in several criminal cases in Crime no:131/2022 u/s. 143, 341 IPC- NTF, Crime no:557/2022 u/s. 294(b), 323,427 IPC -NTF, Crime no:416/2021 u/s. 269 IPC -NTF, Crime no:702/2021 u/s. 269 IPC-NTF, Crime no:1813/2020 u/s. 143, 269,270 IPC-UI, Crime no:1705/2020 u/s. 143, 269, 341 IPC- Referred, Crime no:523/2021 u/s. 269 IPC, Crime no:352/2021 u/s. 143, 269 IPC -Referred, Crime no:1338/2020 u/s. 143, 269,270 IPC-Referred. Thereafter, a show cause notice was issued for suppression of material fact touching adverse police entries. This was accepted by the petitioner vide his letter dated 20-04-2023.

3. Sec. 6(2) of the Passport Act *inter alia* provides under sub-section (f) that the Passport Authority can refuse to issue a passport, where “proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India”. This



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provision however, stands diluted in ***Maneka Gandhi Vs Union of India***

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[(1978) 1 SCC 248], where the Hon'ble Supreme Court has recognised the right of an accused to travel abroad. Therefore, to start with, there cannot be any refusal to issue passport to an applicant merely because he or she is facing an accusation of committing an offence. See: ***Vangala Kasturi Rangacharyulu Vs Central Bureau of Investigation*** [Order of the Apex Court dated 27.09.2021 in CrI.A.No.1342/2017], ***The Regional Passport Officer Vs Samsudeen Mohamed Salih*** [W.A.No.902 of 2023 dated 02.06.2023], ***Venkatesh Kandasamy Vs Government of India, Ministry of External Affairs*** [AIR 2015 Mad 3], ***Shaik Abdulla Vs. The Union of India and Ors.*** (in W.P.No.12515 of 2022 dated 12.05.2022).

4. There is however, a possibility that on obtaining the passport, an accused may flee the country. And it has happened. Here, the Courts often draw a distinction between obtaining a passport and travelling abroad, and has required the accused to obtain the leave of the Court before which the criminal case involving him or her is pending. This makes sense, only for the law abiding. What if someone flees the judicial process and makes him or her never available for trial? In other words, what if the passport holder



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leaves the shores of this country without intimating the Court?

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5. The Passport Act and the Criminal law jurisprudence operate in different spheres. The Criminal Court or an investigating agency may not require the presence of an accused or a convict under suspension of sentence, all the time. Their requirements are guided by different factors. A Passport Authority need not anticipate their requirements nor should be over anxious more than a Criminal Court or an Investigating Agency, while issuing or renewing a passport. It is plainly not its job. Still issuance of passport to an accused can help him to flee law and become a fugitive, and hence there is a need to balance the right of an accused to obtain a passport and the requirement of criminal jurisprudence that he participates in the proceedings. This can be achieved, if upon issuance or renewal of the passport of an accused person, the Passport Authority intimates about it, both to the investigating agency and also the criminal court concerned. The concerned accused, or convict under suspension of sentence, will then be in the radar of the Criminal Court or the investigating agency. It is now for the Court or the investigating agency to act, in which the Passport Authority may not have an immediate role.



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6. This Court therefore, directs the first respondent:

- a) To consider the representation of the petitioner in the light of what is stated in para 3 to 5 after giving the petitioner an opportunity of being heard in the light of above mentioned paragraphs.
- b) In the eventuality of renewing the passport of the petitioner, then to intimate the same to the Criminal Court and also the Investigating Agencies in the cases in which the petitioner is stated to be facing trial.
- c) To dispose of the petitioner's representation for renewal of his passport, bearing in mind the ratio of the aforesaid authorities, within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. Before leaving the country, the petitioner is directed to obtain the leave of the concerned jurisdictional Court.

8. The writ petition is disposed of accordingly. No costs.

19.07.2023

Index : Yes / No

Speaking order / Non-speaking order
ds



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