



W.P.No.31242 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2023

Pronounced on : 01.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.31242 of 2022
and WMP.No.30687 of 2022

R.Subramanian

... Petitioner

Vs.

- 1.The Regional Passport Officer
Roya Towers No.2 & 3, IV Floor
Old No.785, New No.158, Anna Salai
Chennai - 600 002.
- 2.The Assistant Director
Enforcement Directorate
Chennai Zonal Office
3rd Floor, 'C' Block
Murugesu Naicker Complex
84, Greaves Road
Chennai - 600 006.
- 3.The Deputy Superintendent of Police
No.132, Commissioner Office Building
EVK Sampath Road
Vepery, Chennai - 600 007.



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4. The Secretary

Ministry of External Affairs

Union of India

74B, South Block

New Delhi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent to allow the application for renewal of the Passport G2747520 of the petitioner.

For Petitioner : Party-in-Person

For Respondents : Ms.V.Sudha for R1

Mr.A.Kumaraguru

Central Government Standing Counsel for R2

Mr.V.Manoharan

Additional Government Pleader for R3

ORDER

The petitioner herein has applied for the renewal of his passport for the year 2017. He was informed, vide a correspondence dated 27.05.2019, that his file has been closed. However, the petitioner has been corresponding with the passport authority, which includes a communication through his counsel, dated 29.05.2019 and 28.08.2019.



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2. Heard Mr.R.Subramanian, the party in person, Ms.V.Sudha, the learned counsel for the first respondent, Mr.A.Kumaraguru, the learned Central Government Standing Counsel appearing for the second respondent and Mr.V.Manoharan, the learned Additional Government Pleader for the third respondent.

3. It has come to light that the petitioner is stated to be involved in at least two cases, one under the provisions of TNPID Act in C.C.No.6 of 2020 pending before the Special Court for TNPID Cases, Chennai, and another case in C.C.No.4 of 2018 before the Principal Sessions Judge, Chennai, filed by the second respondent. This apart, seven other cases have been registered by the third respondent against the petitioner.

4. The petitioner would submit that so far as the case in C.C.No.6 of 2020, pending before the Special Court for cases under TNPID Act, Chennai is concerned, he is on bail and there is no condition imposed on him that he should not travel abroad. As for the case in C.C.No.4 of 2018, pending before the Principal Sessions Judge, Chennai, the same has been stayed by



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the Hon'ble Supreme Court in CrI.A.No.682 of 2019. He added that since there is no final embargo on him to travel abroad, the passport authority cannot refuse to renew his passport. Reliance was placed on the ratio in ***Ashok Khanna vs. Central Bureau of Investigation*** [(2019) 265 DLT 614] and ***Krishna Chiranjeevi Rao Palukuri Venkata vs. The Union of India*** [(2020) SCC OnLine Kar 3437].

6. Learned counsel appearing for the second respondent submitted that the passport authority merely requires a NOC from the Court where the case is pending, in accordance with the notification of the Ministry of External Affairs, dated 25.08.1993.

7. 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 provision however, stands diluted in ***Maneka Gandhi Vs Union of India*** [(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



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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.1342/2107], ***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).

8. 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, for 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 leaves the shores of this country without intimating the Court?

9. The Passport Act and the Criminal law jurisprudence operate in different



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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, 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.

10. This Court therefore, directs the first respondent:

- a) To renew the passport of the petitioner, if his application for renewal



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of his passport otherwise complies with the requirements of law.

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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 two cases in which the petitioner is stated to be facing trial. .

11. In the result, the writ petition is disposed of with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

01.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To:

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N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.No.31242 of 2022

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