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W.P.No.20014 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.20014 of 2023

R.Tamilmani

.... Petitioner

Vs

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

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent herein to return the passport of the petitioner Vide Passport No.V 6335565 to the petitioner herein within a time frame as this Court may fix.

For Petitioner : Mr.S.Prabhu

For Respondent : Mr.G.Baskaran
Central Government Standing Counsel



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ORDER

The petitioner was issued with a passport and that it is stated to have expired in 2020. Later, he applied for renewal of his passport and that was also done. Thereafter, the passport authority required him to surrender his passport, as the passport authority came to know of adverse police verification report against the petitioner, and it was not returned.

2. The learned counsel for the petitioner submitted that a case was registered against the petitioner for the offences under Section 143, 341 and 188 IPC in Crime No.54/2018 on the file of Mahalingapuram Police Station, Pollachi. The alleged offence is essentially an aspect of expression of citizen's fundamental right to protest, and it cannot be construed as grave enough offence as to deny the petitioner his passport.

3. The learned Standing Counsel appearing for the respondent would submit that there is deliberate suppression of information about the petitioner's involvement in criminality.



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4. 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 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 Crl.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).

5. 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



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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 leaves the shores of this country without intimating the Court?

6. 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, 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



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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.

7. The passport authority's power to impound the passport is delineated under Section 10(3) of the Passport Authority Act, 1967. If the passport authority considers that it is liable to be impounded in the instant case, it is not adequately made known whether the passport authority has actually impounded it under Sec.10(3) or has merely obtained the passport from the petitioner and is holding on to it. If it is a case of suppression of material facts involving the involvement of the petitioner in a criminal case, then it cannot go infinitely. Necessarily, the passport authority has to give an opportunity to the petitioner and decide the issue in terms of what has been delineated herein above.

8. This Court therefore requires the petitioner to give a fresh representation to the passport authority for return of his passport, and the passport authority is required to hold an enquiry on receipt of the said representation



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and decide the issue within a period of eight weeks from the date of receipt of a copy of this order. In the eventuality of returning the passport of the petitioner, the passport authority is required to intimate the same to the Criminal Court and also the Investigating Agency. In this regard, this Court intends to remind the passport authority that it may have to ascertain whether the alleged suppression of petitioner's involvement in the criminal case is deliberate or it is a *bonafide* mistake. The petitioner is also directed to obtain the leave of the concerned jurisdictional Court, before he leaving the country.

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

20.07.2023

Index : Yes / No
Speaking order / Non-speaking orders

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N.SESHASAYEE.J.,

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