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W.P.No.21333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.21333 of 2023

Ramesh Kumarasamy

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Chennai Royala Towers,
No.2 & 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai-600 002.

2.The Inspector of Police,
B-6 Mappedu Police Station,
Thiruvallur, Thiruvallur District.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to renew the passport and re-issue the same to the petitioner considering his online application vide file number MA2074161268722 on 27.04.2022.



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For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.T.C.Thirumalaisamy
Central Government Standing Counsel for R1
Mr.V.Manoharan
Additional Government Pleader for R2

ORDER

The petitioner's application for the renewal of his passport is pending with the authority, and he has been served with a notice dated 27.09.2022, where under the passport authority has sought some clarification owing to adverse police verification.

2.Learned counsel for the petitioner submitted that there are two cases pending against the petitioner in Crime No. 382/2021 u/s 341, 294(b), 506(1) of IPC and u/s 3(1)(r), 3 (1)(s), 3 (2)(va) of SC/ST (Prevention of Atrocities) Act 1989 and in Crime No. 8/2022 u/s 294(b) and 506(1) of IPC on the file of Mappedu police station, Thiruvallur. Both have been dropped and not charge sheeted. He submitted that the petitioner has also responded to the notice issued by the passport authority.

3.Mr.T.C.Thirumalaisamy, the learned Central Government Standing Counsel



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takes notice for 1st respondent, and Mr.V.Manoharan, the learned Additional Government Pleader takes notice for 2nd respondent.

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).



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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 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



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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.

7. This Court therefore, directs the first respondent:

- a) To renew the passport of the petitioner, if his application for renewal of his passport otherwise complies with the requirements of law.
- 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.
- c) Before leaving the country the petitioner is directed to obtain the leave of the concerned jurisdictional Court.
- d) The 1st respondent is now required to dispose of the petitioner's application



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for renewal, bearing in mind the ratio in the aforesaid authorities, within a

period of eight (8) weeks from the date of receipt of copy of order.

8.This Writ Petition stands disposed of accordingly with the above direction. No
Costs.

19.07.2023

Anu

Index : Yes / No

Neutral citation : yes/no

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N.SESHASAYEE, J.

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