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W.P.No.21990 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.21990 of 2023
and
W.M.P.No.21359 of 2023

S.Gunasekaran

...Petitioners

vs.

1.The Regional Passport Officer,
First Floor, Corporation Commercial Complex,
Opp. Thandumariamman Koil,
Avinashi Road, Coimbatore 641 018.

2.The Inspector of Police,
Chettipalayam P.S. Coimbatore.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in File No.CB1075014321923 dated 09.06.2023 and to quash the same and direct the first respondent to renew the passport of the petitioner within a time frame as fixed by this Court.



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For Petitioners : Mr.N.Santhosh Nagarajan

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 09.06.2023 and for a direction to the first respondent to renew the passport of the petitioner within a time frame fixed by this Court.

2. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

3. The case of the petitioner is that an accident took place on 20.06.2021 and based on the same, an FIR came to be registered for the offences under Sections 279, 304A, 337 and 338 of IPC. The investigation was completed and the final report was filed before the Court below. In the meantime, since the tenure of the passport of the petitioner is going to end, the petitioner has approached the first respondent and sought for renewal of his passport. The first respondent through the impugned proceedings dated 09.06.2023 rejected the request made by the petitioner on the ground that the petitioner has not



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submitted any order or judgment from the concerned Court. Aggrieved by the same, the petitioner has filed this writ petition and also sought for a further direction to the first respondent to renew the passport of the petitioner within the time frame fixed by this Court.

4. The issue that is involved in the present writ petition is directly covered by the earlier judgment passed by the Court in ***Rahul Ravendran versus Union of India, Rep.by its Principal Secretary to Government, Ministry of External Affairs, New Delhi and others*** reported in ***2021 (4) MLJ Criminal 289***. The relevant portions in the said judgment is extracted here under:

“5. The main ground that has been raised by the respondents while opposing the re-issue / renewal of the Passport is that, criminal proceedings are pending against the petitioner before the Judicial Magistrate Court, Valliyoor in P.R.C.No.121/2017. According to the respondents, the petitioner has concealed the pendency of the criminal proceedings and therefore, he is not entitled for the re-issue/ renewal of the Passport.

6. This Court had an occasion to deal with a similar issue in W.P.(MD) No.7056 of 2017 in the case of N.Chandrababu vs. the Sub Inspector of Police and another. The relevant portions



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in the order dated 21.04.2017 are extracted hereunder:

“3)..... At this juncture, it may be relevant to discuss the legal position with regard to the right of a person facing criminal prosecution to demand issuance of passport. To decide this issue, it may be necessary to extract the following legal provisions from the Passports Act, 1967.

'Section 5(2) of the Passports Act, 1967 On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries ; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement. Section 6(2) of the Passports Act, 1967.

Subject to the other provisions of this Act, the passport



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authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground,

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at an time during the period of five years immediately preceding the date of his application, been convicted by a Court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been



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made by any such Court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

4) For deciding the issue at hand, Section 6(2)(f) will be relevant. A reading of the said provisions shows that the power of the Passport Authority to refuse issuance of passport under Section 5(2)(c) is governed by Section 6(2). Thus, for any of the reasons given in Clause (a) to (i) of Section 6(2), the Passport Authorities can refuse to issue a passport in exercise of power under Section 5(2)(c). The Parliament, in its wisdom, has conferred the aforesaid power, which is administrative in nature, on the Passport Authority. The Central Government has issued the following Notification dated 25.08.1993, for regulating the exercise of power by the Passport Authority under Section 6(2) (f):

“In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts



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citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:

(a) The passport to be issued to every such citizen shall be issued:-

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided



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the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

5. From a reading of the aforesaid Notification, in the opinion of this Court, the expression 'concerned Court' will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the 'concerned Court' would be the learned Judicial Magistrate No.V, Trichy before whom the petitioner is facing trial in C.C.No.21 of 2015. However, this Court, in exercise of its power under Section 482 of Cr.P.C., has admitted Crl.O.P.(MD)No.3533 of and has granted stay of all further proceedings in C.C.No. 21 of 2015 on the file of Judicial Magistrate No.V, Trichy. Under such circumstances, the expression 'concerned Court' in the context of the present case will mean the High Court and not the Judicial Magistrate No.V, Trichy."



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7. *This Court also had another occasion to consider the same issue in Crl.O.P(MD) No.5068 of 2018 in Noushad Thazhaith vs. State, rep.by the Deputy Superintendent of Police and another. The relevant portions of the order are extracted hereunder:*

"The petitioner is facing trial in PRC No.2 of 2013 before the Judicial Magistrate No.III, Coimbatore for the offences under Section 4 (a) and 6 r/w 4(G) of the Explosive Substance Act, 1908. The petitioner has filed a quash application in Crl.O.P.No.3532 of 2018 challenging the prosecution and the same is pending before this Court. The petitioner is the holder of Indian Passport bearing No. H 5939876 issued at Kozhikode, Kerala on 09.09.2009 valid upto 08.09.2019.

2.It is the case of the petitioner that he has business interest in the Middle East and that he has been going abroad frequently on valid visa. It is his further case that the pages in his passport got exhausted and therefore, when he applied for a fresh passport, the Passport Authorities directed him to obtain necessary permission under Section 6(2)(f) r/w Section 22 of the Passports Act r/w Notification No. GSR 570 E dated 25.08.1993. Hence, the petitioner has filed the present application for permission.

3.Heard Mr.N.Manokaran, learned counsel for the petitioner, Mr.C.Raghavan for the respondent Police and



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Mr.N.Vijaya Baskar for 2nd respondent Passport Authorities.

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4.Under normal circumstances, in a case of this nature, this Court would not grant permission for the petitioner to go abroad. However, it is seen that this petitioner has been granted permission earlier by the learned Judicial Magistrate No.III, Coimbatore vide order dated 03.11.2015 in CMP.No. 4280/2015 and by this Court in Crl.O.P.No.22055/2016 dated 10.02.2017. The learned Judicial Magistrate No.III, Coimbatore in his order dated 03.11.2015 has noted that the petitioner has been appearing regularly before the Court from 2013 onwards and because of the failure of the prosecution to summon the co-accused, the Magistrate has not been able to commit the case to the Court of Sessions. Only this aspect has weighed in the mind of this Court for positively considering the request of the petitioner. The law with regard to grant of permission for renewal of passport has been settled by this Court in N.Chandrababu vs. Sub Inspector of Police Palakkarai Police Station, Trichy [2017 (3) CTC 493] and it may not be necessary to recapitulate the legal propositions.

5.Suffice it to say that, when a criminal case is pending before a Court, passport can be issued or renewed only on the basis of production of orders from the concerned Court permitting the applicant to depart from India. In notification NOGSR 570 B, the conditions under which a passport or travel documents could be issued has been enumerated. Taking into



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consideration the earlier conduct of the petitioner, as noted by the Judicial Magistrate No.III in his order dated 03.11.2015, this Court grants permission to the petitioner to depart from India and return within a period of eight months from the date of this order. Exemption is granted to the petitioner from the operations of the provisions of Clause (f) sub section (2) of section 6 of the Passports Act, for a period of eight months from the date of this order. The petitioner shall abide by the conditions set out in the notification dated 25.08.1993”.

The above order was also followed in the subsequent order passed in Crl.O.P.No.7220 of 2019 dated 07.06.2019”

5. It is clear from the above judgment that wherever the criminal proceedings are pending before the Competent Court and the accused person seeks for renewal or for issuance of fresh passport, necessary application must be made before the concerned Court and the order passed by the Court must be produced before the Authority for renewal of the passport. This Court has taken into consideration the notification dated 25.08.1993, that was issued by the Central Government in this regard. This Court has held that reading of the notification will clearly show that the “concerned Court” will mean the Court before which the person is facing proceedings.



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6. In this case the petitioner is facing proceedings before the learned Judicial Magistrate, Madukkarai, Coimbatore in C.C.No.16 of 2023. In view of the same, the petitioner has to make an appropriate application before the concerned Court and get permission for renewal of his passport. Except giving this clarity, no further orders will be passed in this writ petition. Once the learned Judicial Magistrate, Madukkarai, Coimbatore, passes the order, the same can be produced before the first respondent and the first respondent shall consider the same for the renewal of passport of the petitioner.

7. This writ petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is also closed. No cost.

28.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

1.The Regional Passport Officer,
First Floor, Corporation Commercial Complex,
Opp. Thandumariamman Koil,
Avinashi Road, Coimbatore 641 018.



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2.The Inspector of Police,
Chettipalayam P.S. Coimbatore.

3.The Public Prosecutor,
Madras High Court,
Chennai 600 104.



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N. ANAND VENKATESH, J.

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