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W.P.No.22136 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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MR.JUSTICE N.SESHASAYEE

W.P.No.22136 of 2023

Subramanian

... Petitioner

Vs.

1.Government of India
Ministry of External Affairs
Rep.by Regional Passport Officer
Regional Passport Office
Tiruchirapalli, New Municipal Complex
Thillainagar, 7th Cross
Tiruchirappalli - 620 018

2.The Inspector of Police
Padalur Police Station
Perambalur District 621 109

3.The Inspector of Police
Perambalur Police Station
Perambalur District 621 212

4.The Inspector of Police
B-1, North Beach Police Station
Chennai 600 001
Respondents

...

Prayer: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, to direct the 1st respondent to renew the passport of the petitioner vide File No.TR2075503823523 dated 23.06.2023.



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For Petitioner : Mr.M.Mathan Raj

For Respondents : Mr.Pragadish - R1

Mr.V.Manoharan
Additional Government Pleader - R2 to R4

ORDER

The petitioner seeks a direction to the 1st respondent for disposing his application for renewal of his passport. The petitioner understands that his application is not processed in view of certain criminal cases pending against him.

2.Mr.Pragadish, the learned counsel takes notice for the 1st respondent. Mr.V.Manoharan, the learned Additional Government Pleader takes notice for the respondents 2 to 4.

3.The petitioner's application for renewal of passport was objected by the first Respondent vide a letter dated 30.06.2023 owing to adverse police verification report in which he had certain criminal cases pending against him in Crime No. 334 of 2022 u/s. 143, 188 of IPC on the file of Padalur Police Station, Crime No. 448/2017 u/s 107 crpc, Crime No. 262/2013 u/s 147, 148, 294(b), 324, 506(ii) IPC, 3 PPDL Act, Crime No. 331/2021 u/s 143,341 IPC on the file of



Perambalur Police Station.

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4. Learned counsel for the petitioner submitted that mere accusation will not tantamount to guilt and hence the right of the petitioner to obtain a passport or have his passport renewed cannot come in the way. He relied on *AIR 2015 Mad 3 - Venkatesh Kandasamy Vs. Govt. of India, 2018 SCC Online Mad 857 - Ashok Giri Vs. State of TN, MANU/TN/4549/2022 - Shaik Abdullah Vs.UOI and 2022 SCC Online J & K 1066 - Rajesh Gupta Vs.UOI*.

5. 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 CrI.A.No.1342/2017], *The Regional Passport Officer Vs Samsudeen*



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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).

6. 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?

7. 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.

8. 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 cases in which the petitioner is stated to be facing trial.
- c) The 1st respondent is now required to dispose of the petitioner's application for renewal, bearing in mind the ratio in the aforesaid authorities, within a period of eight (8) weeks from the date of receipt of



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

10. This writ petition stands disposed of accordingly. No costs.

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Index : Yes / No

Neutral citation : yes/no

To:

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N.SESHASAYEE, J.

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