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W.P.No.23542 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.23542 of 2023

Ajeeth Kumaar

...Petitioner

Vs

The Regional Passport Officer,
Regional Passport Office,
1st Floor, Corporation Commercial Complex,
Opp.Thandumarriamman Koil,
Avinashi Road,
Coimbatore – 641 018.

...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondent to issue a new passport with present residence address by consider the petitioner's reply dated 26.07.2023 made in File.No.CB1075552954923 in Letter Ref.No.SCN/315320715/23 on 21.07.2023 on the file of the respondent.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.K.Gangadaran,
Central Government Counsel



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ORDER

The petitioner is arrayed as one of the accused in Crime No.525 of 2015 on the file of Central Crime Branch, Chennai for offences under Section 465, 467, 468, 471, 420 r/w 120(B) IPC. This Court is informed that the allegation against the petitioner and others is that they have conspired to cheat individuals to a tune of Rs.250 Crores. The petitioner now states that he has applied for a passport and the same is pending with the respondent Passport Authority.

2.Mr.K.Gangadaran, Central Government Counsel takes notice for the respondent and explained about the case pending against the petitioner.

3.The learned counsel for the petitioner agrees that if the respondent Passport Authority is satisfied about the issuance of the Passport, he may issue the same and directly sent it to the Principal Sessions Judge, Chennai.

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



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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 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 required the accused to obtain the leave of the Court before which the criminal case involving him or her is pending. This



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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 concerned accused, or convict under suspension of



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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 respondent:

- a) To re-issue the passport of the petitioner with present residence address, if his application for re-issuance 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 case in which the petitioner is stated to be facing trial.
- c) The respondent is now required to dispose of the petitioner's application for re-issuance, 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. Before leaving the country, the petitioner is directed to obtain the leave of the concerned jurisdictional Court.

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



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No costs.

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Index : Yes/No

Internet : Yes/No

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To:

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N.SESHASAYEE, J.,



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