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W.P.No.24126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.24126 of 2023

V.S.Amaran

... Petitioner

Vs.

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

2.The Inspector of Police,
Puliyampatti Police Station,
Erode District.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, directing the first respondent to consider the application in File No.CB1065507128723 dated 26/06/2023 for the issuance of the Passport notwithstanding the pendency of case in Crime No.255/2022 on the file of the second respondent.



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For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.M.Sathyam, ACGSC for R1

Mr.N.Muthuvel, GA (Crl.Side) For R2

ORDER

The petitioner has applied for a passport Vide Application dated 26.06.2023 and seeks a direction to the Passport Authority to issue the passport at the very earliest.

2.Mr.M.Sathyam, learned Assistant Central Government Standing Counsel appearing for the first respondent submitted that against the petitioner a FIR is pending and that notice has been served on the petitioner.

3.The Petitioner is now required to appear before the Passport Authority/first respondent and explain the same.

4.Having said that, vis-a-vis the issuance of passport to individuals who face any criminal prosecution ets., in W.P.No.31242 of 2022 on 01.09.2023, this Court has passed the following order.



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“ 7. 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.1342/2107], **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).

8. 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



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before which the criminal case involving him or her is pending. This makes sense, for 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?

9. 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 sentence, will then be in the



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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.

10. 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. .*

11. In the result, the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.”

5.The Writ Petition is disposed of in terms of the order passed by this Court in W.P.No.31242 of 2022 as extracted above. No costs.

11.09.2023

Tsg



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Index : Yes / No

Neutral citation : yes/no

N.SESHASAYEE, J.
Tsg

To

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