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W.P.No.25592 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.25592 of 2023

Sheik Mohamed

...Petitioner

Vs

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
No.132, EVK Sampath Salai,
Vepery, Chennai – 7.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st Respondent to issue the passport to the Petitioner after considering his online application vide File No.MA2074288563922 dated 8.06.2022 within a time bound framed by this Hon'ble Court.



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For Petitioner : Mr.A.Raja Mohamed
For R1 : Mr.J.Madanagopal Rao,
Special Government Pleader
For R2 : Mr.N.Muthuvel,
Government Advocate (Crl. Side)

ORDER

The petitioner's application for renewal of passport is stated to be pending with the Passport Authority and the petitioner says that because of his alleged involvement in a couple of criminal cases, he presumes that his Application for renewal is kept pending. He has been served with a show cause notice dated 22.06.2022 and this has been replied to by the petitioner through a clarification dated 06.09.2022.

2.Mr.J.Madanagopal Rao, learned Special Panel Counsel takes notice for the first respondent. Mr.N.Muthuvel, learned Government Advocate (Crl. Side) takes notice for the second respondent. They informed the Court that the petitioner is involved in criminal cases in Crime No. 18/2019 u/s 75 of TN City Police Act, 1888 on the file of Triplicane Police Station and Crime No. 147/2020 u/s 143, 145, 147, 151, 290 and 341 of IPC, u/s



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41, 71 A (1) of TN City Police Act, 1888, Sec 4A (1a) of TN Open Places (Prevention of disfigurement) Act, 1959 on the file of Washermenpet Police Station.

3. The learned counsel for the petitioner submits whatever criminal case that was made against the petitioner has come to an end and today, the petitioner is a free man.

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 CrI.A.No.1342/2017],



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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 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



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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.

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.



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- 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) To dispose of the petitioner's application for renewal of his passport, bearing in mind the ratio of the aforesaid authorities, within a period of eight (8) weeks from the date of receipt of a copy of this order.

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

9. The writ petition is disposed of accordingly. No costs.

31.08.2023

Index : Yes/No
Internet : Yes/No
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N.SESHASAYEE, J.,

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To

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