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W.P.No.27175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.27175 of 2023

Madhu Nehru

... Petitioner

Vs.

The Regional Passport Officer,
Tower 2 & 3, 4th Floor, Rayala Towers,
No.158, Anna Salai, Chennai-600 052

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, to direct the respondent to consider the passport application of the petitioner vide No.MA51CS5070212922 dated 15.09.2022 without reference to the criminal case pending against the petitioner in S.C.No.90 of 2015 on the file of the Principal District Court, Dharmapuri.

For Petitioner : J.Bharathi Raja

For Respondents : Mr.B.Ramprabu
Central Government Standing Counsel



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5.The learned counsel for the petitioner submitted that since there is no final embargo on him to travel abroad, the passport authority cannot refuse to issue a passport. Reliance was placed on the ratio in ***Ashok Khanna vs. Central Bureau of Investigation*** [(2019) 265 DLT 614] and ***Krishna Chiranjeevi Rao Palukuri Venkata vs. The Union of India*** [(2020) SCC OnLine Kar 3437].

6.The learned counsel appearing for the respondent submitted that the passport authority merely requires a NOC from the Court where the case is pending, in accordance with the notification of the Ministry of External Affairs, dated 25.08.1993.

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



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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.1342/2107], ***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 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?



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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 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.



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10. This Court therefore, directs the respondent:

- a) To issue a passport to the petitioner, if his application for issuance of passport otherwise complies with the requirements of law.
- b) In the eventuality of issuing the passport to the petitioner, then to intimate the same to the Criminal Court and also the Investigating Agency involved in the case 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 issuance of passport, bearing in mind the ratio in the aforesaid authorities, within a period of eight (8) weeks from the date of receipt of a copy of this order.

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

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

No costs.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Anu



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N.SESHASAYEE.J.,

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