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W.P.No.26606 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM :
MR.JUSTICE N.SESHASAYEE

W.P.No.26606 of 2023

Manoj Lingam

... Petitioner

Vs.

1.The Regional Passport Officer
Government of India
Ministry of External Affairs
Regional Passport Office
Royala Towers 2nd, 3rd, 4th Floors, Old No.785
New No.158, AnnaSalai
Chennai - 600 002.

2.The Inspector of Police
Sivagangai Town Police Station
Sivagangai District
(Crime No.156/2021)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the first respondent herein to issue a Passport in favour of the petitioner on the basis of petitioner application dated 16.06.2023 in File No.MA 1065479713523 within the time stipulated by this Court.



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For Petitioner : B.Thirumalai

For Respondents : Mr.K.Ramana Moorthy
Central Government Counsel for R1

Mr.N.Muthuvel
Government Advocate (Crl. Side) for R2

ORDER

The petitioner herein has applied to the first respondent on 16.06.2023 for an issuance of a passport. He was informed, vide a communication No.SCN/315255329/23 dated 12.07.2023, that during police verification there was an adverse report corresponding to his application in connection with his File No.MA 1065479713523 and also called for his explanation within 30 days. However, the petitioner has personally approached the first respondent and explained that the above case is only foisted one and the petitioner is no way connected to the case.

2.Heard Mr.R.Thirumalai, the learned counsel for the petitioner,
Mr.K.Ramanamoorthy, the learned Central Government Standing Counsel



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for the first respondent, Mr.N.Muthuvel, the learned Government Advocate
(Crl. Side) for the second respondent.

3.It has come to light that the petitioner is stated to be involved in a Crime No.156 of 2021 pending before the Inspector of Police, Sivagangai Town Police Station for the offence under Section 147, 148, 294(b), 353, 307, 506 (ii) I.P.C. and 25(1) (a) of Arms Act on 18.03.2021.

4. The petitioner would submit that so far as the case in Crime No.156 of 2021, pending before the second respondent is concerned, the second respondent police did not proceed further with the investigation and the said complaint is kept in cold storage for more than two years, which clearly goes to prove that the police have foisted a false case at the instigation of some of his opponents without any evidence whatsoever and the petitioner has also engaged a counsel to contest the case registered against him and there is no condition imposed on him that he should not travel abroad. As He added that since there is no final embargo on him to travel abroad, the passport authority cannot refuse to renew his passport. Reliance was placed on the ratio in *Ashok Khanna vs. Central Bureau of Investigation* [(2019)]



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265 DLT 614] and **Krishna Chiranjeevi Rao Palukuri Venkata vs. The Union of India** [(2020) SCC OnLine Kar 3437].

6. Section 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.1342/2107], **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).



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7. 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?

8. 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



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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.

9. This Court therefore, directs the first 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 issuance of 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.

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

No costs.

12.09.2023

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