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W.P.No.27094 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.27094 of 2023

Gokul Gomathi Radhakrishnan

...Petitioner

-Vs-

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

2.The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai.
(Crime No.21 of 2014)

3.The Inspector of Police,
District Crime Branch,
Kanchipuram.
(Crime No.8 of 2017)

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st Respondent to renew/reissue the passport to the petitioner, pending in file No.MA1073735262121, within a reasonable time as may be fixed by this Hon'ble Court.



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W.P.No.27094 of 2023

For Petitioner : Mr.A.E.Ravichandran
For R1 : Mr.M.Sathyan, ACGSC
For R2 & R3 : Mr.N.Muthuvel,
Government Advocate (Crl. Side)

ORDER

The petitioner's application for renewal of passport is kept pending by the Passport Authority on the basis of an adverse police report, in that he is stated to be arrayed as A1 in Crime No.21 of 2014 on the file of K.K.Nagar Police/second respondent for offences under Section 147, 148, 323, 448, 506(ii) IPC and Section 4 of TNPHW Act and Section 3 of Tamil Nadu Medical Services Persona & Medicare Service Institution (Prevention of Violence and Damage or Loss to Property) Act and also in another case in Crime No.8 of 2017 of Kanchipuram DCB *inter alia* under Sections 420, 84, 468, 471 r/w 341 IPC.

2.The learned counsel for the petitioner submitted that Crime No.21 of 2014 was later tried in SC.No.288 of 2019 by the First Additional Sessions Court [TADA] Court, Chennai and the petitioner was convicted to undergo 3 years SI Vide Judgment dated 02.02.2023. The petitioner



W.P.No.27094 of 2023

has since preferred an appeal in Crl.A.No.166 of 2023 before this Court and it is pending. He also added that Vide order in Crl.M.P.No.2545 of 2023, he is now in suspension of sentence. So far as Crime No.8 of 2017 registered by DCB, Kanchipuram is concerned, the learned counsel for the petitioner submits the petitioner was dropped from the charge sheet in the final report of the Investigating Authority.

3.Mr.M.Sathyan, learned Assistant Central Government Standing Counsel takes notice for the first respondent and Mr.N.Muthuvel, learned Government Advocate (Crl. Side) takes notice for the respondents 2 and 3.

4.The learned counsel for the respondents 2 and 3 concurred with the statement made by the learned counsel for the petitioner vis-a-vis his involvement in certain criminal cases.

5.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



W.P.No.27094 of 2023

“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).

6. 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



W.P.No.27094 of 2023

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?

7.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



W.P.No.27094 of 2023

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.

8. 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.

9. The petitioner is directed not to leave the Country without obtaining



W.P.No.27094 of 2023

the permission from the concerned jurisdictional court, vis-a-vis the criminal case against him.

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

No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index : Yes/No

Internet : Yes/No

Tsg

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N.SESHASAYEE, J.,



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W.P.No.27094 of 2023

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