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W.P.No.27704 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

MR.JUSTICE N.SESHASAYEE

W.P.No.27704 of 2023

B.Sabareeswaran

... Petitioner

Vs.

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

2.The Inspector of Police
Pollachi West Police Station
Coimbatore District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the first respondent to re-issue (return back) the petitioner's passport bearing No.Z66771265 issued on 08.04.2022 within a stipulated time fixed by this Court.

For Petitioner : V.Manikandan

For Respondents : Mr.R.Sidharth
Central Government Standing Counsel for R1

Mr.R.Kishore Kumar
Government Pleader (Crl. Side) - R2

ORDER



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The petitioner herein has been issued with a passport bearing No.H662895 on 08.04.2010 by the 1st respondent. His passport was expired on 07.04.2020 and an application was made for renewal of his passport on 01.04.2022 and the petitioner's passport was renewed on 08.04.2022 and his Passport No.Z6671265. Due to property dispute, the petitioner filed a case against his father and his aunt that was registered in Crime No.262 of 2021 under Section 294(b), 323, 324 and 506(i) I.P.C. and as a counter case his father at the instigation of his sister and her sons made a false complaint against him and his brother in Crime No.264 of 2021 under Section 294(b) 323 and 506(i) I.P.C. on the file of the 2nd respondent. In this regard, the 1st respondent sought explanation regarding the adverse report received from the Superintendent of Police, Coimbatore District and the same was submitted in person to the 1st respondent on 03.06.2023 and the 1st respondent insisted the petitioner to surrender his passport on the same day. The 1st respondent again sought clarification on 20.12.2022 for re-issuance of his passport and asked the petitioner to appear before them. The petitioner again appeared before the 1st respondent and submitted his explanation, thereafter, there was no reply from the 1st respondent.

2.Heard the learned counsel for the petitioner, Mr.R.Sidharth, the learned



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Central Government Standing Counsel for the first respondent, and Mr.R.Kishore Kumar, 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 criminal case and a counter case in Crime Nos.262 and 264 of 2021, for the offence under Section 294(b), 323, 324 and 506(i) I.P.C. and the same is pending before the learned Judicial Magistrate, Pollachi. filed by the petitioner's father. The 1st respondent vide its communication dated 06.04.2022 directed the petitioner to provide NOC from the concerned trial Court to provide service.

4.The petitioner would submit that he has approached the Judicial Magistrate Court No.II, Pollachi seeking charge sheet on 28.07.2023, the same was returned on the ground that no charge sheet has been filed. F.I.R. was registered in the year 2021, till date charge sheet has not been filed by the 2nd respondent police and there is no instruction imposed on him that he should not travel abroad. Hence, the denial of passport on the ground of pendency of criminal case is not unjustifiable and amounts to violation of



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Article 21 of the Constitution of India. He added that since there is no final embargo on him to travel abroad, the passport authority cannot refuse to return his 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].

5. Learned counsel appearing for the second 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.

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



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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).

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, 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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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 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:



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a) To return the passport of the petitioner, if his explanation for return of his passport otherwise complies with the requirements of law.

b) In the eventuality of returning 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.

10. Before leaving the country, the petitioner is required to obtain the leave of the concerned jurisdictional Court.

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

No costs. Consequently, the connected miscellaneous petition is closed.

22.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

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