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W.P.No.30019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.30019 of 2023
& WMP.No.29637 of 2023

Suresh

... Petitioner

Vs

The Regional Passport Officer,
“Royal Tower”
Nos.2 & 3, 4th Floor,
Old No.785, New No.158,
Anna Salai, Chennai – 600 002

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order passed by the respondent vide his letter Ref.No.CNO.315611729/23 dated 25.08.2023 and quash the same and consequently direct the respondent to issue passport vide his file No.MA5064579189522 dated 12.09.2022.

For Petitioner : Mr.R.Vasudevan
for Mr.E.Kannadasan

For Respondent : Mr.K.Gangadaran
Central Government Counsel



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ORDER

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The petitioner has sought a writ of certiorarified mandamus challenging letter bearing reference No. CNO 315611729 dated 25.08.2023. Prima facie the impugned letter only calls upon the petitioner to appear before the authority along with relevant documents in support of his application for issuance of passport.

2. The petitioner had applied for the issuance of passport vide application dated 12.09.2022 bearing file No.MA506457918922. The application form contains a field relating to pendency or otherwise of criminal cases itself. Admittedly, the petitioner has not made a proper disclosure.

3. The writ affidavit proceeds on the basis that the application form had been filled in by a person in the browsing centre and thus the petitioner cannot be blamed for making an incorrect statement in the application form.

4. This would not exonerate the petitioner from making a full and true disclosure as it is incumbent upon an applicant to ensure that all necessary particulars are provided even at the stage of making an application. Thus non-disclosure of criminal antecedents would certainly amount of suppression of material facts.

5. Be that as it may, when the application was sent for police verification, the report was adverse and it is hence that the respondent has



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called upon the petitioner to appear before him to explain both the factum of non-disclosure as well as the details of the pending criminal cases itself.

6. Admittedly, the petitioner did not appear before them in response to show cause notice dated 17.09.2022 and the subsequent notice dated 25.08.2023. He further states that he had approached the respondent personally thereafter to explain the background in which the criminal case came to be instituted.

7. It is an admitted position that a criminal case is pending in Pernambut Police Station in Crime No.333 of 2016 and the matter is pending trial before the Sessions Court, Vellore in Spl.S.C.No.92 of 2020.

8. It is thus for the petitioner to comply with notice dated 25.08.2023 which merely calls for his attendance and explanation. However, the impugned notice apart from calling for various particulars as well as the attendance of the petitioner, also indicates that the petitioner would be asked to provide an order of permission from the concerned criminal court.

9. Learned counsel for the respondent would also pursue the same line of argument.

10. The Hon'ble Supreme Court in the case of *Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation* (Criminal Appeal No.1342 of 2017 dated 27.09.2021) considered the case of an applicant seeking a



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direction to the respondent to renew a passport that had expired. Such non-renewal was on account of the pendency of the criminal appeal before the Supreme Court.

11. It was the specific submission of the learned Additional Solicitor General, who appeared for the Central Bureau of Investigation that the renewal of passport can be considered only after the applicant obtained permission from the concerned trial Court. He relied, in that regard, on Section 6.2 of the Passports Act, 1967.

12. Section 6.2 reads as follows:

'6. Refusal of passports, travel documents. etc.

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(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) that the applicant is not a citizen of India.,*
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,*
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;*
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;*



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(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.'

13. The Hon'ble Supreme Court went on to note that none of those conditions arose in that case and moreover, renewal cannot be rejected on the ground of pendency of criminal appeal.

14. The aforesaid decision has been referred to by the First Bench of this Court in the case of *Regional Passport Officer v. Samsudeen Mohamed Salih and another* (WA.No.902 of 2023 dated 02.06.2023).

15. That appeal had been filed assailing the order passed by the Writ Court directing re-issue of passport despite pendency of criminal proceedings



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against the applicant. The appeal came to be disposed rejecting the argument of the appellant Regional Passport Officer to the effect that the applicant cannot travel abroad without the permission of the Judge before whom the criminal case was pending.

16. In this case as well, the appellant had pressed into service Section 6 of the Passports Act, 1967. The First Bench has held that re-issue/renewal of passport would not be hampered by pendency of criminal case against the applicant and the application shall be processed with without insisting upon permission of the trial Court. Such direction would be required only if the applicant were, in fact, to travel abroad in which case, necessary permission would have to be sought. The condition however cannot be made applicable to an anterior stage of the process, i.e., at the stage of renewal/re-issue of passport.

17. Learned counsel for the respondent has circulated a copy of GSR 570(E) dated 25.08.1993 which states that in the case of an applicant in regard to whom proceedings are pending before the criminal court in India, the citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued. The format of undertaking that has been provided also does not indicate that an order has to be obtained from the Magistrate for issuance of passport.



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18. Taking a cue from the aforesaid decisions, the following order is

issued:

(i) The respondent shall issue a notice afresh to the petitioner forthwith to enable him to appear before the authority with necessary materials in support of his application.

(ii) Let the application of the petitioner be disposed in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of eight (8) weeks from date of receipt of a copy of this order.

(iii) It is made clear that while the authority may insist upon all necessary undertakings from the petitioner, there shall be no insistence of approval or sanction to be obtained from the Magistrate at this stage.

19. This Writ Petition stands disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

17.11.2023

Index : Yes / No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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**Note: Registry is directed to issue
a copy of this order on or before 20.11.2023.**



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Dr.ANITA SUMANTH,J.

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To

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