



WP (MD) No.14134 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.14134 of 2023

S.Santhakumar

... Petitioner

Vs

1.The Regional Passport Officer,
Regional passport office,
Baharathi Ula Veedhi,
Race Course Road,
Madurai – 625 002.

2.The State represented by
The Inspector of Police,
Elayangudi Police Station,
Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the 1st respondent to issue passport as applied in No.13.01.2023, MD1064969002723 to the petitioner by considering the representation made on 17.04.2023.

For petitioner : Mr.Chamundi Bose

For Respondent : Mr.T.Thirupathy,

No.1 Central Government Standing Counsel

For Respondent : Mr.GV.Vairam Santhosh

No.2 Additional Government Pleader



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ORDER

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The petitioner filed this writ petition for a writ of mandamus, directing the respondent to issue passport to the petitioner based on the petitioner's representation dated 17.04.2023.

2.The learned Counsel for the petitioner submits that the petitioner, who was initially arrayed as an accused in Crime No.383 of 2020 on the file of the Elayangudi Police Station, Sivagangai, has been now discharged in the alteration report. Therefore, the writ petition may be allowed with a direction to the respondents to issue passport.

3.The learned Counsel for the 1st respondent submits that due to the pendency of the FIR the petitioner's application was not considered.

4.The petitioner, who was initially arrayed as an accused in Crime No.383 of 2020 on the file of the Elayangudi Police Station, Sivagangai district for the for the offence under Sections 147, 148, 427 and 329 of IPC has now been discharged in the alteration report. A copy of the FIR and the alteration report are filed before this Court.



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5. Pendency of an FIR, by itself, cannot be a ground to refuse the passport.

The Passport Authority can refuse the passport and any travel documents under Section 6 of the Passport Act, 1967. Section 6(2)(F) of the Act would be relevant and the same is extracted as under:-

“6. Refusal of passports, travel documents, etc-

...

(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 -

...

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.”

6. The above provision enables the Passport Authority to refuse the passport or travel document to an applicant on the ground that proceedings in respect of an offence alleged to have been committed by the applicant is pending before a Criminal Court. Registration of an FIR on the police files, based on a complaint, cannot be construed as a proceedings pending before the Criminal Court.



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7.The role of the Court pending the investigation has been discussed by various Courts. In ***W.Jaihar William v. State of Tamil Nadu [2014 (2) CWC 684]***, this Court has held as follows:-

“8. ... It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of criminal proceedings in respect of the offences alleged to have been committed by the applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the applicant, as stipulated under Section 190 of Cr.PC., it can be construed as 'proceedings pending before the Court'”

8.A Division Bench of this Court in ***Arumugam v. Regional Passport Officer, Madurai [W.A(MD)No.301 of 2018, dated 27.03.2018]***, has held as follows:-

“8. ... mere pendency of the criminal proceedings cannot be construed as pendency of the criminal proceedings. The decisions relied on for reaching the said conclusion in the above cited decision, would also disclose that unless cognizance is taken by the concerned Magistrate, it does not amount to pendency of the criminal proceedings. Admittedly, in the case on hand, the case is in FIR stage and even for the sake of arguments, subsequently, the charge sheet has been filed, as on the date of submission of the application for passport, only FIR is pending and it cannot be construed as pendency of a criminal case and



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it cannot be said that the petitioner has suppressed the material fact of pendency of the criminal case.”

9.In fact, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following instruction was issued:-

“5. In view of the above, the following instructions may be adopted while processing the passport applications in respect of those applicants who may have criminal proceedings pending before a criminal court in India:

...

(vi) ... It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2) (f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same.”

Therefore, the Passport Authority is not justified in not deciding the application filed by the petitioner for passport by referring the criminal case.

10.Ordinarily, the duration of a passport as per Rule 12 of the Passport Rules is for a period of 10 years. In the event if the applicant is facing any criminal proceedings, the passport may be issued by restricting the period.



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11. Accordingly, this writ petition is allowed with a direction to the Passport Authority to issue passport to this petitioner, by considering his application, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

13.07.2023

dsk

To

1. The Regional Passport Officer,
Regional passport office,
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2. The State represented by
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B.PUGALENDHI, J.

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