



WP (MD) No.13580 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.13580 of 2023

Adaikkalam

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
Trichy.

2.The Inspector of Police,
Avudaiyarkovil Police Station,
Avudaiyarkovil Taluk,
Pudukottai 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 to the petitioner by considering the petitioner application No.ARN 23-1005698373 on 10.05.2023 within a stipulated time prescribed by this Court.

For petitioner : Mr.R.Paranjothi

For Respondent : Mr.M.Subbiah,

No.1 Central Government Standing Counsel

For Respondent : Mr.J.John Prabudurai

No.2 Government Advocate



WP (MD) No.13580 of 2023

ORDER

WEB COPY

The petitioner's application dated 10.05.2023 for grant of passport was not considered by the Passport Authority, on the ground that FIR is pending as against the petitioner.

2.The learned Counsel for the petitioner submits that the petitioner has submitted an application for grant of passport on 10.05.2023 and so far it has not been considered by the respondents citing the pendency of the FIR registered as against this petitioner in Crime No.394 of 2021 for the offence under Sections 379 IPC r/w 21(1) and 21(2) of the MMDR Act.

3.The learned Government Advocate appearing for the respondent Police submits that final report has been filed before the Judicial Magistrate Court concerned and it is not taken on file.

4.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



WP (MD) No.13580 of 2023

and the same is extracted as under:-

WEB COPY

“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.”

5.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.

6.Similarly, unless and until the Court takes cognizance of the final report filed by the Investigative Agency, it cannot be termed as a proceedings pending



WP (MD) No.13580 of 2023

before the Criminal Court. ***In Re Narsingh Das Tapadia v. Goverdhan Das***

Partani & Another [(2000) 7 SCC 183], the Hon'ble Supreme Court has observed

as follows:-

“8. "Taking cognizance of an offence" by the Court has to be distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or Court has taken cognizance of an offence it must be shown that he has applied his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant. If the Magistrate or the Court is shown to have applied the mind not for the purpose of taking action upon the complaint but for taking some other kind of action contemplated under the Code Criminal Procedure such as ordering investigation under Section 156(3) or issuing a search warrant, he cannot be said to have taken cognizance of the offence.”

7.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



WP (MD) No.13580 of 2023

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. ...”

8. 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.

9. 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.



WP (MD) No.13580 of 2023

10. Accordingly, this writ petition is allowed with a direction to the 1st respondent 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.

04.07.2023

dsk

To

1. The Regional Passport Officer,
Regional Passport Office,
Trichy.
2. The Inspector of Police,
Avudaiyarkovil Police Station,
Avudaiyarkovil Taluk,
Pudukottai District.



WEB COPY



WP (MD) No.13580 of 2023

B.PUGALENDHI, J.

dsk

WP(MD)No.13580 of 2023

04.07.2023