



W.P(MD)No.14553 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.14553 of 2023

Siva Chinna Samy

Petitioner

Vs.

1.The Regional Passport Officer,
Office of the Regional Passport Officer,
Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District.

3.The Inspector of Police,
Aravayal Police Station,
Sivagangai District.

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the first respondent for re-issue/renew the petitioner's passport by processing the application in Passport application No.MD1073547562121 pending before the first respondent in accordance with law within the time stipulated by this Court.



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W.P(MD)No.14553 of 2023

For Petitioner

:Mr.S.Ramesh Kumar

For R1

:Mr.V.B.Sundareshwar

Central Government Standing
Counsel

For R2 & R3

:Mr.P.Kottaichamy

Government Advocate

ORDER

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

2.Mr.V.B.Sundareshwar, learned Central Government Standing Counsel, who takes notice for the first respondent submits that based on the police verification report, the petitioner was directed to offer his explanation. However, the petitioner without doing so has approached this Court.

3.Mr.P.Kottaichamy, learned Government Advocate, who takes notice for the respondents 2 & 3 submits that the petitioner is involved in a case in Crime No.90 of 2021 on the file of the Aravayal Police Station for the offences punishable under Sections



W.P(MD)No.14553 of 2023

294b, 467, 472,506(i) & 120 B IPC and the same has been transferred to DCB, Sivagangai and re-numbered as Crime No.24 of 2021. He further submits that the investigation is under process.

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 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.”



W.P(MD)No.14553 of 2023

WEB COPY

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.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'”



W.P(MD)No.14553 of 2023

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

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:-



W.P(MD)No.14553 of 2023

WEB COPY

“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 renewal of 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.



W.P(MD)No.14553 of 2023

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

24.08.2023

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

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To

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W.P(MD)No.14553 of 2023

B.PUGALENDHI, J

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Order made in
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