



W.P. (MD).No.16707 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.(MD).No.16707 of 2023

M.Gajendran

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Bharathiula Street,
Race Course Road,
Madurai-625 002.

2.The Inspector of Police,
Keelakarai Police Station,
Keelakarai
Ramanathapuram District.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to issue Passport to the petitioner based on his application in File No:MD1062230144519 on the file of the first respondent within a stipulated time by this Court.



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For Petitioner : Mr.P.Suresh Kumar

For Respondents : Mr.Arjuna Rajan,
Central Government Standing Counsel
for R1
Mr.G.V.Vairom Santhosh
Additional Government Pleader
for R2

ORDER

This Writ Petition has been filed seeking for a direction to the first respondent to issue Passport to the petitioner based on his application in File No.MD1062230144519.

2. The learned Central Government Standing Counsel appearing for the first respondent, on instructions, submits that the petitioner's application for issuing the Passport was already considered and closed by the first respondent vide order dated 12.03.2020 on the ground that the petitioner has not responded to the queries made by the first respondent vide communication dated 15.02.2020, on the adverse report received from the Police for his involvement in Crime Nos.8 of 2013 and 45 of 2017 which are still pending and the final reports have not been filed so far.



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3. In response to the said submissions, the learned counsel appearing for the petitioner submits that on 12.07.2019, the petitioner appeared before the first respondent and submitted his explanation in writing along with the documents. Without considering the same, the first respondent has closed the petitioner's application.

4. This Court considered the rival submissions made by the learned counsel appearing for the parties.

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



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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.

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



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



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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



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facing any criminal proceedings, the passport may be issued by restricting the period.

11. Considering the facts and circumstances of the case, this Writ Petition is disposed of, with a direction to the petitioner to submit a fresh application along with required documents for Passport within a period of two weeks from the date of receipt of a copy of this order. On such application being made, the first respondent shall ascertain the present condition of the cases in Crime No.8 of 2013 and 45 of 2017 and in the event the cases referred to have not been charge sheeted, shall proceed further with the application and after satisfying with the further requirement, shall issue Passport to the petitioner. There shall be no order as to costs.

12.07.2023

Index: Yes/No
Internet: Yes/No
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To

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B.PUGALENDHI, J.

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