



W.P.(MD)No.16395 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.16395 of 2023

Kathiravan

... Petitioner

versus

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

2. The Inspector of Police,
Surandai Police Station,
Tenkasi District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents more particularly the 1st respondent to issue passport to the petitioner based on his application dated 05.05.2022 pending in File No.MD2064185423922 before the first respondent by accepting the written explanation given by him dated 30.06.2023 within a time frame.



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For Petitioner : Mr.D.Venkatesh
For R1 : Ms.B.Dheepa,
Central Government Standing Counsel
For R2 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner has applied for a passport before the first respondent vide application No.MD2064185423922 dated 05.05.2022. Since the same has not been considered, the petitioner has filed this writ petition for a Mandamus directing the first respondent to issue passport to the petitioner by considering his application.

2. When this writ petition is taken up for hearing, the learned Central Government Standing Counsel appearing for the first respondent submits that during police verification, an adverse report has been received that the petitioner is involved in a case in Crime No. 175 of 2019 on the file of the Inspector of Police, Surandai Police Station, Tenkasi District, for the offence under Sections 147, 153A, 294(b), 427, 506(ii) IPC and Sections 3(1)(r), 3(1)(s) of SC/ST



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(Prevention of Atrocities) Act 2015.

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3. In reply to the same, the learned counsel appearing for the petitioner submits that the case in Crime No.175 of 2019 is only at the stage of FIR and the petitioner has already filed a petition in CrI.O.P. (MD)No.7577 of 2022 before this Court seeking to quash the proceedings in Cr.No.175 of 2019, which was allowed by order dated 25.04.2022 and therefore, there is no case pending as against the petitioner as on date.

4. The learned Additional Government Pleader appearing for the second respondent submits that CrI.O.P.(MD)No.7577 of 2022 was allowed with a direction to the petitioner and other accused to pay a sum of Rs.5,000/- to the credit of Government of Tamil Nadu, CMPRF in IOB, Secretariat Branch, Chennai-9. Since the petitioner has failed to comply with the order, the respondent Police has filed a final report, which has been taken on file in S.C.No.3 of 2020 by the learned



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learned II Additional District and Sessions Judge (Special Cases for PCR), Tirunelveli. Thereafter, the petitioner and other accused have filed a petition in CrI.O.P.(MD)No.2161 of 2023 to quash the proceedings in S.C.No.3 of 2009.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. 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 -

...



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

7. 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.

8. The Ministry of External Affairs, Government of India, has issued a statutory notification in GSR.570(E) dated 25.08.1993 with certain guidelines by providing relief to those applicants against whom criminal proceedings are pending before the Courts that they can obtain the passport by obtaining No Objection Certificate from the concerned Court and also by filing an undertaking as prescribed in the notification.



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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.

10. In this case, the petitioner is involved in a case in Crime No. 175 of 2019, wherein, a final report has been filed and the same has been taken on file in S.C.No.3 of 2020 on the file of the learned II Additional District and Sessions Judge (Special Cases for PCR), Tirunelveli. Challenging the same, the petitioner has filed a petition in CrI.O.P.(MD)No.2161 of 2023 to quash the proceedings in S.C.No.3 of 2020.

11. Since the criminal case is pending as against the petitioner in S.C.No.3 of 2020 before the learned II Additional District and Sessions Judge (Special Cases for PCR), Tirunelveli, this writ petition is disposed of with the following directions:-



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i) The petitioner shall file an affidavit of undertaking along with substantive sureties to ensure his availability for the trial, before the concerned Court where the case is pending. The Court, on satisfaction and after ensuring his availability for the trial, shall issue a No Objection Certificate to the petitioner enabling him to obtain the passport.

ii) The petitioner, thereafter, shall file an affidavit under GSR. 570(E) along with a No Objection Certificate obtained from the concerned Court before the Passport Authority. On such presentation of the application, the Passport Authority shall consider the same and issue passport for a temporary period depending upon the requirement.

No costs.

07.07.2023

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.



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B.PUGALENDHI, J.

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