



WP (MD) No.16665 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.16665 of 2023
and
WMP(MD)No.13924 of 2023**

Madhankumar

... Petitioner

Vs

1.The Regional Passport Officer,
Bharathi Ula Veethi,
Race Course Road,
Madurai – 625 002.

2.The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District.
[Crime No.333 of 2022]

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus by calling for the records of the impugned notice of the 1st respondent issued to the petitioner vide file No.MD4065489844923, Letter Ref.No.SCN/315176069/23, dated 01.07.2023 and quash the same as illegal and consequently direct the 1st respondent to issue passport to the petitioner forthwith.



WP (MD) No.16665 of 2023

WEB COPY

For petitioner : Mr.V.Angusamy
For Respondent : Mr.G.Thalai Mutharasu,
No.1 Central Government Standing Counsel
For Respondent : Mr.M.Sarangan,
No.2 Additional Government Pleader

ORDER

The petitioner claims that he is an entrepreneur and he has applied for passport for attending the 2nd Global Conclave of Tamil Information Technology Entrepreneurs and Professionals at Malasiya, which is scheduled to be conducted in between 28th and 30th July. Based on the petitioner's application, the 1st respondent Passport Officer has issued the impugned notice dated 01.07.2023 calling upon the petitioner to offer his explanation that he has suppressed his criminal case in Crime No.333 of 2022, which is pending on the file of the Aralvoimozhi Police Station. Therefore, the petitioner has approached this Court.

2.The learned Counsel for the petitioner submits the petitioner is an



WP (MD) No.16665 of 2023

entrepreneur and requires passport to attend a conclave in Malasiya in between 28th July and 30th July 2023. With regard to the criminal case registered in Crime No.333 of 2022, he submits that the criminal case is a foisted one and that too for the offence under Sections 147, 294(b) and 506(i) IPC and challenging the FIR the petitioner has filed a criminal original petition in CrI.O.P(MD)No. 2264 of 2023 and this Court has entertained the same and granted interim stay by order dated 06.04.2023. This order according to the learned Counsel for the petitioner has also been extended periodically.

3.The learned Counsel for the 1st respondent submits that the petitioner has suppressed the criminal case, which is pending against this petitioner in Crime No.333 of 2022 and therefore, in order to get clarification from the petitioner, the impugned notice was issued. It is only a show cause notice and there is no reason to interfere with the same.

4.This Court considered the rival submissions and perused the materials placed on record.

5.The proceedings, which is challenged in this writ petition is only a show



WP (MD) No.16665 of 2023

cause notice, calling upon the petitioner to clarify certain details with regard to the criminal case registered against him in Crime No.333 of 2022. Instead of appearing before the respondent Passport Officer, the petitioner has approached this Court by way of this writ petition. The criminal case registered against this petitioner was challenged before this Court in CrI.O.P(MD)No.2264 of 2023 and this Court has also granted an interim order and it is also periodically extended. A perusal of the materials placed on record shows that the criminal case is registered for the offence under Sections 147, 294 (b) and 506(i) IPC.

6.Pendency of an FIR, by itself, cannot be a ground to refuse the passport. This is the position repeatedly held the Courts. 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 -

...



WP (MD) No.16665 of 2023

(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. Registration of an FIR on the police files, based on a complaint, cannot be construed as a proceedings pending before the Criminal Court.

8.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”

...

10.For the same proposition of law, the learned counsel for the petitioners has also relied upon the judgment delivered by the Andhra



Pradesh High Court reported in 1994 Cri.L.J.257 [Mathumari China Venkatareddy and others Vs. State of Andhra Pradesh], wherein it has been held that until the charge-sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take cognizance of the offence and direct the issue of process only on receipt of a police report and that till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the police. It has been further held in the said judgment as follows:-

“The judicial act commences only when the chargesheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the Court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence”

Therefore, it is clear that unless the Judicial Magistrate takes cognizance of the offence, on filing of charge-sheet on completion of investigation against the applicant, it cannot be said that the proceedings are pending before the Criminal Court. Therefore, in my considered opinion, the 3rd respondent cannot mechanically refuse to issue passport to the petitioners, merely for the reasons that the FIRs are pending against the petitioners. On receipt of the application for passport, the 3rd respondent shall consider the same and pass appropriate orders.”



WP (MD) No.16665 of 2023

WEB COPY 9.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.”

10.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. This is the position in respect of cases where



WP (MD) No.16665 of 2023

criminal proceedings are pending before the Courts.

WEB COPY

11. 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.”

12. 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 for one or two years.

13. From the above it is clear that pendency of an FIR is not a bar for issuing passport. However, the petitioner has failed to mention the same in the application



WP (MD) No.16665 of 2023

submitted to the 1st respondent. The petitioner claims that he is an entrepreneur and he is in need of passport for attending a conclave in Malasiya between 28th July and 30th July 2023. Considering the position of the law and the petitioner's need for passport, this writ petition is disposed of with the following directions:

(i) The petitioner shall appear before the 1st respondent on 18.07.2023 and shall produce the relevant records including the interim order granted by this Court in CrIOP(MD)No.2264 of 2023;

(ii) The petitioner is also expected to submit an apology letter for having suppressed the details in the application for passport submitted by him;

(iii) The 1st respondent after satisfying with the materials placed on record before him by the petitioner and also by considering the ratio laid down by this Court in the above cited judgments, shall issue passport to the petitioner within a period of one week therefrom. No costs. Consequently connected miscellaneous petition is closed.

13.07.2023

dsk

Note: Issue order copy on 17.07.2023

9/11



WEB COPY



WP (MD) No.16665 of 2023

To

- 1.The Regional Passport Officer,
Bharathi Ula Veethi,
Race Course Road,
Madurai – 625 002.
- 2.The Inspector of Police,
Aralvoimozhi Police Station,
Kanyakumari District.



WEB COPY



WP (MD) No.16665 of 2023

B.PUGALENDHI, J.

dsk

WP(MD)No.16665 of 2023

13.07.2023