



WP(MD)No.17254 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.17254 of 2023

Devarajan Pandian

.. Petitioner

v.

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

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

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to reissue a to the petitioner pursuant to his application dated 09.05.2023 bearing file number MD1075341419723 by considering the petitioner's reply dated 03.06.2023, within a stipulated time limit.



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For Petitioner : Mr.K.Muthuvai Ilayaraja

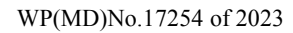
For Respondents : Mr.V.Malaiyendran,
Central Government Standing Counsel
for R.1

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)
for R.2

ORDER

The petitioner is having a passport and it expired by 08.10.2022. He applied for renewal of passport. While processing the application submitted by the petitioner, the first respondent, on police verification, came to know that the petitioner has involved in a case in Crime No.646 of 2022 on the file of the Kenikkarai Police Station, Ramanathapuram, for the offence u/s.143, 283 IPC. Therefore, the first respondent has issued a show cause notice to the petitioner. Apprehending that he would not get the passport, the petitioner has filed this writ petition for a mandamus directing the respondents to re-issue passport.

2.Learned Government Advocate (Crl. Side) for the Police submitted that the case in Crime No.646 of 2022 is still under investigation.



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:-

...

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

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5.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'”

6.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.”

7. 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.

8. 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.



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9. Accordingly, this writ petition is allowed with a direction to the 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.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

26.07.2023

To

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B.PUGALENDHI, J.

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