



W.P(MD)No.20405 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20405 of 2023

T.Shanmuganathan

... Petitioner

Vs

1.The Regional Passport Officer,
Madurai Regional Passport office,
Race Course Road,
Madurai.

2.The State rep by
Inspector of Police,
Keelavalavu Police Station,
Melur Taluk,
Madurai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to issue/renewal of passport to the petitioner on his application dated 14.07.2023, pending in File No.MD1075574400923, based on the petitioner's representation sent to the first respondent.



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For Petitioner : Mr.S.Arunnithy
For R1 : Mr.H.Velavadhas
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy
Government Advocate

ORDER

The petitioner was issued with a passport in the year 2011 and the same has been expired in the year 2021. For re-issuance of passport, the petitioner has submitted an application on 14.07.2023 and filed this writ petition for a Mandamus directing the first respondent to reissue passport to the petitioner.

2.Mr.H.Velavadhas, learned Central Government Standing Counsel, who takes notice for the first respondent submits that on police verification, it is reported that the petitioner is involved in a criminal case in Crime No.165 of 2022. Therefore, the petitioner was called upon to furnish the details as to the stage of the case in Crime No.165 of 2022, by notice dated 19.07.2023. However, the petitioner, without responding to the notice issued by them has approached this Court by way of this writ petition.



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3.Mr.P.Kottaichamy, learned Government Advocate, who takes notice for the second respondent submits that the petitioner is involved in a Crime No.165 of 2022 for the offences punishable under Sections 7(1), 24(1) of Cigarette and other Tobacco Products Act, 2003 and Section 328 of IPC and the same is under investigation.

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 -

...



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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.”

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



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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'”

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.”



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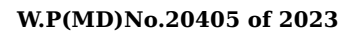
8. In fact, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following instruction was issued:-

“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.



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 twelve weeks from the date of receipt of a copy of this order. No costs.

22.08.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes
vrn



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To
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- 2.The Inspector of Police,
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B.PUGALENDHI, J.

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