



WP(MD)No.20855 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Harikarasuthan

.. Petitioner

v.

1.The Regional Passport Officer,
Regional Passport Office,
New Municipal Complex,
Thillai Nagar 7th Cross,
Tiruchirappalli.

2.The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
Cr.No.139/2017

3.The Inspector of Police,
Vattathikottai Police Station,
Thanjavur District.
Cr.No.33/2018

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the first respondent to issue passport to the petitioner based on his application for issuance of an



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Indian Passport dated 06.02.2023 in file number TR1065042517523 on the
file of the first respondent.

For Petitioner : Mr.R.Balamuruganantham

For Respondents : Mr.B.Narayan Ram,
Central Government Standing Counsel
for R.1

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)
for R.2, R.3

ORDER

The petitioner has applied for passport on 06.02.2023. While processing the application submitted by the petitioner, the first respondent, on police verification, came to know that the petitioner has involved in certain criminal cases. Therefore, the first respondent has issued a show cause notice calling upon the petitioner to offer his applications. Apprehending that the passport would not be issued to him, the petitioner has filed this writ petition.

2.Learned Government Advocate (Crl. Side) appearing for the Police, on instructions, submitted that the petitioner has involved in a case



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in Crime No.139 of 2017 on the file of the Thiruchitrambalam Police Station, Thanjavur, for the offence u/s.294(b), 323, 324, 506(ii) IPC and in Crime No.33 of 2018, on the file of the Vattathikottai Police Station, Thanjavur, for the offence u/s.147, 148, 294(b), 324, 326, 506(ii) IPC, 4 of Tamil Nadu Prohibition of Harassment of Women Act. He further submitted that both the cases are still under investigation.

3.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 -

...

(f) that proceedings in respect of an offence alleged to have



been committed by the applicant are pending before a Criminal Court in India.”

4.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.

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'”



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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.

9. Accordingly, this writ petition is allowed with a direction to the Passport Authority to issue passport to this petitioner, by considering his



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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

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To

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B.PUGALENDHI, J.

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