



W.P(MD)No.21586 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21586 of 2023

Abinesh

... Petitioner

Vs

1.The Regional Passport Officer,
Government Of India,
Ministry of External Affairs,
Regional Passport Office,
Madurai Bharathi Ula Street,
Race Course Road,
Madurai – 625 002.

2.The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai,
Sivagangai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned communication order issued by the first respondent in his proceedings in letter Ref No.SCN/314187677/23, dated 31.01.2023 quash the same as illegal and consequently directing the first



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respondent to issue passport based on the petitioner's application No.MD1064900673522, within a stipulated time limit as fixed by this Court.

For Petitioner	: Mr.S.Sarvagan Prabhu
For R1	: Mr.V.Malaiyendran Standing Counsel
For R2	: Mr.P.Kottaichamy Government Advocate

ORDER

The petitioner has submitted an application for issuance of passport on 23.12.2022. Based on that application, the first respondent has called for a report from the second respondent. The second respondent by referring a criminal case, which is pending as against the petitioner in Crime No.192 of 2022 on the file of the Sivagangai Police Station has submitted a report before the first respondent, based on which, the petitioner was directed to clarify with regard to the criminal case pending as against him vide communication dated 31.01.2023. The petitioner claims that this criminal case has been registered as if this petitioner has indulged in an offence punishable under Sections 20(b) (ii) (B) of NDPS Act.



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The petitioner has also sent a detailed explanation on 09.08.2023 that this is a false case, which is foisted as against him and he is not aware of this case. The first respondent has not considered this explanation offered by the petitioner. Hence, the petitioner is before this Court with this writ petition seeking for a Mandamus directing the first respondent to issue the passport to the petitioner.

2.Mr.V.Malaiyendran, learned Standing Counsel, who takes notice for the first respondent submits that based on the adverse report received from the second respondent, they have not issued the passport to the petitioner.

3. Mr.P.Kottaichamy, learned Government Advocate, who takes notice for the second respondent submits that the petitioner is involved in a case in Crime No.192 of 2022 on the file of the Sivagangai Police Station for the offences punishable under Sections 20(b) (ii) (B) of NDPS Act and the same is under investigation.



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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 -

...

(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



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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 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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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.”

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:-



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“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.

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.



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10. 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.

05.09.2023

NCC :Yes/No

Index :Yes/No

Internet:Yes

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To

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B.PUGALENDHI, J.

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