



W.P.(MD)No.23297 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.23297 of 2023

Mohamed Ali

... Petitioner

versus

1. The Regional Passport Officer,
Regional Passport Office,
Madurai.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the first respondent to re-issue passport to the petitioner by considering his passport application in file number MD1075311677323 dated 28.04.2023.

For Petitioner : Mr.K.Navaneetharaja



WEB COPY



W.P.(MD)No.23297 of 2023

For R1 : Mr.R.Arjuna Rajan
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy,
Government Advocate (Crl. side)

ORDER

This writ petition is filed for a Mandamus, directing the first respondent to re-issue passport to the petitioner by considering his passport application in file number MD1075311677323 dated 28.04.2023.

2. The learned counsel appearing for the petitioner submits that the petitioner was issued with a passport bearing No.L5474426 dated 02.12.2023. Since the said passport is due to expire in the month of December 2023, he applied for renewal of his passport before the first respondent on 28.04.2023. While so, the first respondent has issued a notice on 29.05.2023 calling upon the petitioner to offer his explanation for the cases in Crime No.132 of 2020 under Sections 188, 269 IPC and Section 12 of Tamil Nadu Gaming Act and Crime No.256



W.P.(MD)No.23297 of 2023

of 2020 under Sections 188, 269 of IPC and Section 12 of the Tamil Nadu Gaming Act. Though the petitioner has submitted his explanation on 13.09.2023, the first respondent has not considered the same. Hence, the petitioner has filed this writ petition.

3. Mr.R.Arjuna Rajan, learned Central Government Standing Counsel, who takes notice for the first respondent, submits that the petitioner is involved in Crime No.132 of 2020 under Sections 188, 269 IPC and Section 12 of Tamil Nadu Gaming Act and Crime No.256 of 2020 under Sections 188, 269 of IPC and Section 12 of the Tamil Nadu Gaming Act. Therefore, the petitioner was called upon to offer his explanation with regard to those cases. Instead of appearing before the first respondent to offer his explanation, the petitioner has filed this writ petition.

4. Mr.P.Kottaichamy, learned Government Advocate (Crl. Side) submits that the criminal cases pending against the petitioner are only



at the stage of FIR.

WEB COPY

5. The learned counsel appearing for the petitioner submits that since both the criminal cases are at the stage of FIR, there cannot be any bar for re-issuing passport to the petitioner.

6. 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.”

WEB COPY

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



W.P.(MD)No.23297 of 2023

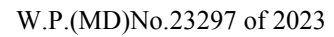
pending before the Court'”

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. In fact, the Ministry of External Affairs, Government of India, has issued a Circular dated 10.10.2019, wherein, the following



“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.*”

11. 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.



W.P.(MD)No.23297 of 2023

WEB COPY

12. Accordingly, this writ petition is allowed with a direction to the Passport Authority to renew the passport of the petitioner, by considering his application, within a period of six weeks from the date of receipt of a copy of this order.

25.09.2023

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

1. The Regional Passport Officer,
Regional Passport Office,
Madurai.
2. The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram District.



WEB COPY



W.P.(MD)No.23297 of 2023

B.PUGALENDHI, J.

ogy

W.P.(MD)No.23297 of 2023

25.09.2023