



W.P.(MD)No.23652 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.23652 of 2023

Vijaypalani

... Petitioner

versus

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

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the 1st respondent to reissue the passport by renewing the passport of the petitioner in accordance with law by processing the File No.MD1075638607723 dated 02.08.2023 within the time stipulated by this Court.



W.P.(MD)No.23652 of 2023

For Petitioner : Mr.Baburajendran
For R1 : Mr.K.Kuttalanathan,
Central Government Standing Counsel
For R2 : Mr.P.Kottaichamy,
Government Advocate (Crl. Side)

ORDER

The petitioner was issued with a Passport bearing No.M1153314 for a period from 12.08.2014 to 11.08.2024. Now, the petitioner got a job abroad. Therefore, he applied for re-issuance of passport on 02.08.2023. But, the first respondent, based on the police verification report, refused to entertain his application on the ground that he is involved in a case in Crime No.84/2022 for the offence under Sections 143, 147, 341 of IPC.

2. Mr.K.Kuttalanathan, learned Central Government Standing Counsel, who takes notice for the first respondent, submits that since the petitioner is involved in a case in Crime No.84 of 2022, the first respondent has not considered his application for re-issuance of passport.



W.P.(MD)No.23652 of 2023

3. Mr.P.Kottaichamy, learned Government Advocate (Crl. Side), who takes notice for the second respondent submits that the petitioner is involved in a case in Crime No.84 of 2022 and the same is under investigation.

4. The learned counsel appearing for the petitioner submits that the pendency of a criminal case at the FIR stage is not a bar for re-issuance of the passport. Therefore, he seeks for a direction to the first respondent to re-issue the passport to the petitioner.

5. 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



W.P.(MD)No.23652 of 2023

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.”

6. 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.

7. 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



WEB COPY

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'”

8. 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



W.P.(MD)No.23652 of 2023

petitioner has suppressed the material fact of pendency of the criminal case.”

9. 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.



W.P.(MD)No.23652 of 2023

WEB COPY

10. 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.

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

27.09.2023

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

Note : Issue order copy on or before 03.10.2023



WEB COPY



W.P.(MD)No.23652 of 2023

B.PUGALENDHI, J.

ogy

To

1. The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai – 625 002.
2. The Inspector of Police,
Alagappapuram Police Station,
Sivagangai District.

W.P.(MD)No.23652 of 2023

27.09.2023