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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.3871 of 2024

Sudhakar

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office
Chennai Royala towers
No.2 & 3, IV Floor, Old No.785
New No.158, Annasalai,
Chennai – 600 002

2.The Inspector of Police
DCB Kanchipuram
(Crime No.85/2013)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to Renew the petitioner Passport bearing No.K5810030 which is expired on 25.09.2022 based on the representation dated 16.09.2023 in accordance with law.

For Petitioner : Mr.M.Jaikumar

For Respondent : Mr.K.Gangadaran (for R1)
Central Government Standing Counsel

Mr.V.Meghanathan (for R2)
Government Advocate



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ORDER

The petitioner has sought a mandamus directing the first respondent being the Regional Passport Officer, Chennai to renew passport bearing No.K5810030 that had expired on 25.09.2022. The petitioner has made a representation on 16.09.2023 to similar effect.

2.Mr.K.Gangadaran, learned Central Government Standing Counsel accepts notice for R1 and Mr.V.Meghanathan, learned Government Advocate accepts notice for R2 and both are armed with instructions to enable final disposal of this matter, even at this juncture. Hence, by consent of both learned counsel, this Writ Petition is taken up for final disposal, even at the stage of admission.

3.The petitioner was issued passport bearing No.K5810030 on 26.09.2012 with validity of 10 years. He had sought renewal of same by application dated 16.11.2022 filed beyond the period of currency of the passport.

4.A notice was received from the 1st respondent on 10.10.2023 based on an adverse Police Report indicating the involvement of the petitioner in a case registered in Cr.No.85 of 2013 under Sections 120B, 419, 423, 465, 468, 471 of Indian Penal Code and calling for the petitioner's explanation. The matter is



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pending trial before the Judicial Magistrate Court-II, Kanchipuram in
C.C.No.89 of 2017.

5.The petitioner responded to the notice by way of reply dated 16.09.2023 which is what he refers to as his representation. Despite the same, there has been no progress in the processing of the application and hence this writ petition.

6.The Hon'ble Supreme Court in the case of *Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation* (Criminal Appeal No.1342 of 2017 dated 27.09.2021) considered the case of an applicant seeking a direction to the respondent to renew a passport that had expired. Such non-renewal was on account of the pendency of the criminal appeal before the Supreme Court.

7.It was the specific submission of the learned Additional Solicitor General, who had appeared for the Central Bureau of Investigation that the renewal of passport can be considered only after the applicant obtained permission from the concerned trial Court. He relied, in that regard, on Section 6.2 of the Passports Act, 1967.

8. Section 6.2 reads as follows:

'6. Refusal of passports, travel documents. etc.

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(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: -

- (a) that the applicant is not a citizen of India.,*
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,*
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;*
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;*
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;*
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;*
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;*
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;*



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(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.'

9.The Hon'ble Supreme Court went on to note that none of those conditions arose in that case and moreover, renewal cannot be rejected on the ground of pendency of criminal appeal.

10.The aforesaid decision has been referred to by the First Bench of this Court in the case of *Regional Passport Officer v. Samsudeen Mohamed Salih and another* (WA.No.902 of 2023 dated 02.06.2023).

11.That appeal had been filed assailing the order passed by the Writ Court directing re-issue of passport despite pendency of criminal proceedings against the applicant. The appeal came to be disposed rejecting the argument of the appellant Regional Passport Officer to the effect that the applicant cannot travel abroad without the permission of the Judge before whom the criminal case was pending.

12.In this case as well, the appellant had pressed into service Section 6 of the Passports Act, 1967. The First Bench has held that re-issue/renewal of passport would not be hampered by pendency of criminal case against the applicant and the application shall be processed with without insisting upon permission of the trial Court. Such direction would be required only if the applicant were, in fact, to travel abroad in which case, necessary permission



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would have to be sought. The condition however cannot be made applicable to an anterior stage of the process, i.e., at the stage of renewal/re-issue of passport.

13.Learned counsel for the respondent has circulated a copy of GSR 570(E) dated 25.08.1993 which states that in the case of an applicant in regard to whom proceedings are pending before the criminal court in India, the citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued.

14.The format of undertaking that has been provided also does not indicate that an order has to be obtained from the Magistrate for issuance of passport. Since the matter is now pending trial, an added safeguard available to the respondents is that permission will invariably have to be obtained by the petitioner from the concerned Magistrate prior to travel abroad.

15.Taking a cue from the aforesaid decisions, the petitioner is permitted to appear before the 1st respondent on any date between 21.02.2024 and 29.02.2024, between 11.00 a.m. and 5.00 p.m. and the petitioner shall be granted audience by R1, heard and his application disposed in accordance with law and in line with the ratio of the judgments cited in the preceding paragraphs within a period of one week from date of his appearance.



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16.This Writ Petition stands disposed in the aforesaid terms. No costs.

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Index : Yes / No

Speaking order

Neutral Citation:Yes

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To

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Dr.ANITA SUMANTH,J.

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