



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3781 of 2024

B.Hyder Ali

... Petitioner

Vs.

The Regional Passport Office (Chennai),
Ministry of External Affairs,
Government of India,
Regional Passport Office,
Rayala Towers No.2 & 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai – 600 002.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to re-issue a passport to the petitioner on his application dated 03.10.2023 bearing Reference No.23-1012291485.

For Petitioner : Mr.R.Ragavendran

For Respondent : Mrs.R.Durgarani
CGSC



WEB COPY

W.P.No.3781 of



ORDER

The Writ of Mandamus has been filed to direct the respondent to re-issue a passport to the petitioner on his application dated 03.10.2023 bearing Reference No.23-1012291485.

2. The petitioner states that he is doing textile business and exporting garments to various places. Therefore, the petitioner needed to travel abroad to meet various consumers, who intend to purchase in huge volume. Due to frequent travel by the petitioner, pages of his passport were filled and therefore, he applied for re-issuance of passport on 03.10.2023. Since the respondent has not issued the passport, the petitioner filed an application under the RTI Act, 2005 to respondent seeking reasons for non-issuance of passport. It is informed by the respondent that they received a letter from the Commissioner of Customs (Preventive), Tiruchirapalli to impound the passport of the petitioner. Thus, the petitioner filed the present writ petition.

3. The counter affidavit filed by the respondent states that the Commissioner of Customs (Preventive), Tiruchirapalli, requesting the respondent to impound the passports of offenders against whom prosecution



has been launched in various Courts. The name of the petitioner was listed in Sl.No.26 of the list of offenders, who were stated to be previously arrested for smuggling and against whom the prosecution under Section 135 of the Customs Act, 1962 has been filed in various Judicial Courts and are pending trial.

4. It is brought to the notice of this Court that many applications seeking issuance of Passport have been filed by furnishing false informations and suppressing the material informations regarding registration of Criminal Case. If the Regional Passport Office found that the material informations are suppressed or false informations are provided, then such applicants are liable to be prosecuted under Section 12(b) of the Passport Act, 1967.

5. Punishment prescribed under Section 12(e) is “Imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both”. Therefore, the applicants seeking Passport must furnish all the material informations truly and correctly and in the event of identifying any false informations or material informations, the Regional Passport Officers are directed to prosecute those persons by following the due



process.

WEB COPY

6. In respect of the grievances to travel abroad, the person against whom the Criminal Cases are pending has to approach the jurisdictional Criminal Court by filing an appropriate application. However, writ petition is not entertainable for the purpose of grant of permission to travel abroad or to issue Passport during the pendency of the Criminal case in India.

7. In the present case, the petitioner is aged about 39 years. Therefore, his idea may be to secure the Passport during pendency of criminal case for the purpose of traveling abroad. The petitioner in his affidavit stated that he has applied for passport to work in abroad, by submitting all proofs and documents. Therefore, it is amply clear that the petitioner has taken a decision to travel abroad during the pendency of the criminal case.

8. The practice of filing a writ petition during the pendency of the criminal case for the purpose of securing the passport to travel abroad, if permitted would hamper the criminal proceedings. The criminal court may not be in a position to proceed with the trial or grant of relief would lead to destroy the prosecution in establishing the offence before the criminal court



WEB COPY

9. Section 6(2)(f) of the Passport Act, 1967 enumerates that “Proceedings in respect of an offence alleged to have been committed by the applicant are pending before the criminal court in India” is a ground to refuse passport.

10. Mr.Prasad Vijayakumar, learned Counsel brought to the notice of this Court that Ministry of External Affairs issued a notification dated 25.08.1993 in G.S.R.570(E) and the same is extracted hereunder:

“In exercise of the powers conferred by clause (a) of Section 22 of the Passport Act 1967 (15 of 1967) and in Supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298 (E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart



from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issued -

(i) for the period specified in order of the court referred to above, if the Court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime,



the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said 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.”

11. When the issuance of passport during the pendency of the criminal proceedings has been required, a person seeking issuance or re-issuance of passport during the pendency of the criminal case has to approach the jurisdictional criminal court necessarily for seeking permission to travel abroad. The court concerned may consider the notification issued by the Ministry of External Affairs while granting permission to such accused persons to travel abroad.

12. In the present case, admittedly the name of the petitioner was listed in the list of offenders, who were previously arrested for smuggling and



against whom the prosecution under Section 135 of the Customs Act, 1962 has been filed in various Judicial Courts and are pending trial. Therefore, for all purposes, it is to be construed that a criminal cases are pending for trial and the petitioner is at liberty to participate in the trial and subject to final outcome, he is at liberty to approach the Regional Passport Office to consider his application by following the due process. Contrarily, he cannot secure passport during the pendency of a criminal case and such an attempt cannot be considered by this Court.

13. Thus, the Writ Petition is devoid of merits and stands dismissed.

However, there shall be no order as to costs.

29.04.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Regional Passport Office (Chennai),
Ministry of External Affairs,
Government of India,
Regional Passport Office,



Rayala Towers No.2 & 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai – 600 002.

WEB COPY

W.P.No.3781 of





WEB COPY

W.P.No.3781 of



S.M.SUBRAMANIAM, J.

Jeni

W.P.No.3781 of 2024

29.04.2024