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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5848 of 2023

Swathi Ramesh

... Petitioner

Vs.

1.The Regional Passport Office,
Coimbatore First Floor,
Corporation Commercial Complex,
Avinashi Road, Coimbatore – 641 018.
Tamil Nadu.

2.The Superintendent of Police,
Coimbatore District,
Coimbatore.

3.The Inspector of Police,
Koilapalayam Police Station,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the first respondent to issue the fresh passport to the petitioner by considering her application No.CB1074736829522 dated 14.11.2022 as submitted to the first respondent.

For Petitioner

: Mr.R.Chitti Babu



For R1

: Mr.A.Veeramani
CGSC

For R2 & R3

: Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

ORDER

The Writ of Mandamus has been filed to direct the 1st respondent to re-issue the Passport to the petitioner as applied for.

2. It is not in dispute that the petitioner is involved in criminal case in Crime No.30 of 2017 registered under Sections 406, 420, 506(i) of Indian Penal Code alter to 406, 420, 477(A), 465, 468, 471, 109 of Indian Penal Code, which is pending trial before the Judicial Magistrate, Ambattur.

3. Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) appearing on behalf of the respondents 2 and 3 would submit that a criminal case has been filed before the competent criminal court of law. The case is pending for trial in CC.No.429 of 2017 on the file of Judicial Magistrate, Ambattur.



4. However, Mr.Vinoth Kumar, learned Government Advocate (Criminal Side) 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.

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.

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7. In the present case, the petitioner is aged about 30 years. Therefore, her idea may be to secure the Passport during pendency of criminal case for the purpose of traveling abroad. The petitioner in her affidavit stated that she 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 of law.

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.

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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 trial is pending in CC.No.429 of 2017 before the Judicial Magistrate, Ambattur. 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, she is at liberty to approach the Regional Passport Office to consider her application by following the due process. Contrarily, she cannot secure passport during the pendency of a criminal case and such an attempt cannot be considered by



this Court.

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

However, there shall be no order as to costs.

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Index : Yes

Speaking order

Neutral Citation : Yes



To

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S.M.SUBRAMANIAM, J.

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