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W.P.No.12472 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12472 of 2021

V.Dillibabu

.... Petitioner

Vs

1. The Regional Passport Officer,
No.26, Haddows Road,
Sastri Bhavan,
College Road,
Chennai – 600 006.

2. The Inspector of Police,
Mammallapuram Police Station,
Mammallapuram,
Thirukazhukundram TK
Chengalput District.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the first respondent to renew the passport vide Passport No.J2458561 by considering the application of the petitioner dated 19.09.2020 with an application No.20-1004002233.

For Petitioner	: Mr.A.Ramalingam
For R1	: Mrs.V.Sudha Central Government Standing Counsel
For R2	: Mr.E.Vijay Anand Additional Government Pleader

ORDER



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This Writ Petition has been filed for a direction directing the first respondent to renew the passport of the petitioner by his application dated 19.09.2020.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner was already issued with passport by the first respondent in the year 2010 and the same expired on 04.10.2010. When the petitioner applied for renewal of his passport, the first respondent had orally informed that the petitioner was already involved in a criminal case and it is pending for trial in S.C.No.140 of 2018 on the file of the District Sessions Court, Chengalpattu, and thereby the petitioner is facing charge under Section 302 of IPC. Hence, the present writ petition.

4. The learned counsel appearing for the petitioner would submit that as per Section 6.2(f) of Passport Act, the passport authority cannot impound or refuse to issue passport or refuse the renewal of passport and in particular the refusal or renewal of passport cannot be



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done by the authority as per the aforesaid provision based on the reason that the criminal case is pending for trial. He further submitted that the valuable right to enter into abroad for petitioner's livelihood cannot be curtailed by the Passport Authority and it is a clear violation of Article 21 of the Constitution of India.

5. A perusal of the counter filed by the first respondent and the submissions made by the learned Central Government Standing Counsel reveals that on receipt of the application for renewal of the petitioner's passport, police verification was done. As per the verification report, the petitioner was involved in a criminal case in Crime No.399 of 2016 on the file of the Inspector of Police, E1 Mamallapuram Police Station for the offences under Sections 365, 294(b), 302, 201 of IPC read with 114 and 120(b) of IPC, which is pending for trial. The above said fact was suppressed by the petitioner while applying for renewal of passport. The petitioner also declared that he has not been charged with criminal proceedings nor is there any arrest warrant or summon pending in any Court of law in India against him.

6. The learned counsel appearing for the petitioner relied



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upon the Judgement of the Hon'ble Supreme Court of India reported in
2021 SCC Online SC 3549 in the case of ***Vangala Kasturi***

Rangacharyulu Vs. Central Bureau of Investigation, wherein it is held that the refusal of a passport can be only in case where an applicant is convicted during the period of five years immediately preceding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years. Section 6.2(f) relates to a situation where the applicant is facing trial in a criminal Court. The conviction in that case stands till the disposal of the criminal appeal and the petitioner was convicted and sentenced to undergo for a period of one year. Therefore, the Passport Authority cannot refuse to renew the passport on the ground of pendency of the criminal appeal.

7. Admittedly, the petitioner is facing criminal trial for the offence under Section 302 of IPC in S.C.No.140 of 2018 on the file of the District Sessions Court, Chengalpattu. So far, no witnesses were examined by the prosecution. It is relevant to extract the provision under Section 6.2 of the Passport Act, 1967, which is hereunder :

“6. (2) Subject to the other provisions of this Act,



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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 ;



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(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;

(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.”

8. Accordingly, the issuance of passport can be refused to any applicant against whom any criminal proceeding is pending in any Court in India. However, the Government has the powers, conferred under Section 22 of the Passport Act, to exempt any person from the operation of all or any of the provisions of the Act. Accordingly, the Government issued a Notification dated 25.08.1993 in G.S.R. 570 (E). It grants exemption to the citizens, 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 order from the Court concerned permitting them to depart from India, from the operation of the



provisions of Clause 6.2(f) of the Passport Act subject to the following conditions :

“(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 either 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 of 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



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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, order specifying a further period of validity of the passport or specifying in a period for travel abroad;

(d) The said citizen shall give an undertaking in writing to the passport authority that he shall, if required by the Court concerned, appear before at any time during the continuance in force of the passport so issued.”

9. In view of the above, the petitioner is directed to obtain permission from the Trial Court for issuance of new passport and produce the same before the first respondent along with undertaking affidavit as per the conditions stipulated under G.S.R.570(E) of the Notification dated 25.08.1993. On receipt of the same, the first respondent is directed to consider and issue passport to the petitioner after renewal.

10. With the above direction, this writ petition stands disposed of. No costs.

25.06.2024

Internet : Yes
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

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G.K.ILANTHIRAIYAN, J.

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