



W.P.No.31190 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.31190 of 2024
and W.M.P.No.33832 of 2024

V.Narayanaswamy

... Petitioner

VS.

1.The Regional Passport Officer
Passport Office
Rayala Towers, No.2 & 3
No.785, 158, Anna Salai,
Chennai-600 002

2.Union of India
Represented by the Assistant Passport Officer
Ministry of External Affairs, Passport Office
Corporation Commercial Complex, 2nd Floor
7th Cross (W), Thillai Nagar
Tiruchirappalli – 620 018

3.The Inspector of Police
Central Crime Branch – II
EDF – III, Vepery, Chennai-600 007

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in passing the order bearing TR2075465028123 dated 29.08.2024 on the file of the first respondent, quash the same and



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consequently direct the first respondent to consider his application No.TR2075465028123 dated 13.06.2023 for renewal of his passport and to pass orders thereof within a time to be specified by this Court.

For Petitioner : M/s.D.N.Dhurgasha
For R1 and R2 : Mr.G.Baskaran
For R3 : Mr.L.Baskaran
Government Advocate (Crl.Side)

ORDER

The writ petition is filed challenging the order passed by the 2nd respondent by putting the application of the petitioner for renewal of his passport on hold citing the pendency of criminal case against the petitioner.

2. It is the case of the petitioner that he acted as a Director of Firm called 'Dhanush Technologies Limited' and he resigned from the Directorship on 28.08.2010. After 3 years from the date of resignation, on the bases of the complaint given by wife of one of Ex-Directors of the said undertaking, the 3rd respondent herein registered criminal case against the petitioner in Crime No.334/2013 under Sections 420 and 120(B) of IPC. Thereafter, the 3rd respondent also filed a charge sheet before the learned



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Metropolitan Magistrate, CCB-CBCID, Egmore and the same was taken on file in C.C.No.204/2022. It is further stated by the petitioner that though the criminal case was taken on file, the petitioner has not received any summons for his appearance so far. As the petitioner's passport got expired, he submitted an application seeking renewal of his passport vide application No.TR2075465028123. The 2nd respondent passed impugned order refusing to renew the passport on the ground that the criminal case was pending against the petitioner. Aggrieved by the same, the petitioner has come before this Court.

3. The learned counsel appearing for the petitioner submits that the petitioner wants to visit his grandson born on 11.03.2024 at Melbourne, Australia. Therefore, he wanted to renew his passport to enable him to visit his grandson. The learned counsel further submits that though criminal case against the petitioner was taken on file in the year 2022, so far no summons have been received by him. Merely because, the criminal case is pending against the petitioner, the 2nd respondent is not justified in refusing renewal of the passport.

4. The learned Government Advocate (Crl.Side) appearing for the 3rd



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respondent filed a status report stating that an FIR was registered against the petitioner under Sections 420 and 120(B) of IPC in Crime No.334/2013.

After completion of investigation, a final report (absconding charge sheet) was filed on 25.08.2021 arraying the petitioner as 2nd accused before the Chief Metropolitan Magistrate Court, Egmore, Chennai. The same was taken on file as C.C.No.204 of 2022 on 20.01.2022. It is also stated by the 3rd respondent that the petitioner and other accused persons never appeared before the Court and the criminal case is posted on 29.11.2024 for serving summons on the accused.

5. It is seen from the averment found in the writ affidavit that filing of the charge sheet and taking cognizance by the Criminal Court in C.C.No.204 of 2022 is known to the petitioner. However, he has not chosen to appear before the Court on the ground that no summons were served on him.

6. A perusal of Section 6(2)(f) of Passports Act, 1967 would indicate Passport Authority is entitled to refuse issuance of passport on the ground that a criminal proceedings against the applicant is pending for an offence allegedly committed by him. In the case on hand, admittedly a criminal case



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is pending against the petitioner and though summons are issued by the Court, not yet served on the petitioner. In such circumstances, the impugned order passed by the 2nd respondent putting the application of the petitioner on hold citing pendency of the criminal case by invoking Section 6(2)(f) of the Passports Act, 1967 cannot be faulted.

7. However, a pendency of the criminal case is not a total bar for curtailing the right of the petitioner to go abroad. It is always open to the petitioner to visit the Foreign Country with express permission from the Court which issued summons to him.

8. The Apex Court in the judgment reported in **2013 (15) SCC 570 (Sumit Mehta vs. State of NCT of Delhi)** observed as follows:-

“The law presumes an accused to be innocent till his guilt is proved. As a presumable innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India.”

9. In **Menaka Gandhi vs. Union of India** reported in **1978 (1) SCC 248**, the Apex Court had held that no person shall be deprived of his right to go abroad except by the fair procedure established by law:- The relevant



observation reads as follows:-

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“Thus, no person can be deprived of his right to, go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports, Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law.

Therefore, such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.”

10. In the case on hand, even in the writ affidavit, the petitioner



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admitted that a criminal case was pending in C.C.No.204 of 2022 on the file of the Metropolitan Magistrate, CCB-CBCID, Egmore. In the status report filed by the 3rd respondent, it is clearly mentioned that the next date of hearing is on 29.11.2024. Therefore, it is always open to the petitioner to appear before the concerned Court and obtain necessary permission for visiting Foreign Country.

11. This Court in ***Sankaranarayanan vs. The Regional Passport Officer, Government of India*** reported in ***2016 SCC Online Mad 17590***, while considering similar question observed as follows:-

“29. It is to be borne in mind that undoubtedly, a citizen of a country has a Right to travel, but the same is not an absolute right. In the same breadth, when Criminal cases are pending against the Petitioner before a concerned Criminal Court and also that the Petitioner is to attend the Criminal Court on 19.07.2016 for certain charges against him in P.R.C.No.42 of 2013 and also he is to participate in the criminal proceedings, then this Court is of the considered view that the Petitioner has to file necessary Miscellaneous Application before the concerned Judicial Magistrate Court and to seek permission of the said Court to travel abroad.”



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12. Taking into consideration the facts and circumstances of the case, this Court is inclined to issue the following directions:-

(A) The petitioner shall file appropriate application before the Criminal Court and obtain leave of the Court to visit the Foreign Country for a stipulated period. If any such permission petition is filed by the petitioner, the same shall be disposed of on its own merits by the concerned Court (Chief Metropolitan Magistrate Court, Egmore, Chennai), within a period of four weeks from the date of filing of such petition.

(B) If permission of the Court is granted, the said order shall be produced before the 2nd respondent by the petitioner. On production of such order, the 2nd respondent shall process the application submitted by the petitioner for renewal of passport and renew the same, if it is otherwise in order.

13. With these directions, the Writ Petition stands disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.



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Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

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2. The Assistant Passport Officer
Union of India
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S.SOUNTHAR, J.

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