



W.P(MD)No.176 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD)No.176 of 2024

Alagu Mooliutappan

... Petitioner

-Vs-

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai – 625 002.

2.The State rep. by
The Inspector of Police
Kottampatti Police Station,
Kottampatti,
Madurai District.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the first respondent to issue passport based on the petitioner's Application No.MD1075951423123 dated 08.11.2023.



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For Petitioner

: Mr.A.V.Arun

For Respondents

: Mr.S.Ponsenthilkumaran

Central Govt. Standing Counsel (for R1)

Ms.M.Aasha

Govt. Advocate (crl.side) (for R2)

ORDER

This writ petition is filed seeking for issuance of a Writ of Mandamus directing the first respondent to issue passport based on the petitioner's Application No.MD1075951423123 dated 08.11.2023.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The case of the petitioner is that he has applied for passport on 08.11.2023 through online. The respondent police has sent a report stating that a criminal case is pending against him in Crime No.361 of 2015 under Sections 294(b), 323, 355 and 506(i) IPC on the file of the second respondent. Thereafter, the first respondent has sent a notice on 06.12.2023 calling explanation in this regard. Thereafter, he has appeared before the



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first respondent and given explanation and FIR copy. However, till date, the first respondent has not issued passport. Hence, he filed the present writ petition.

4.The learned Central Government Standing Counsel appearing for the first respondent would submit that the Writ Petition is premature, as the Petitioner's application was neither rejected nor closed, as on date. The Petitioner was asked to appear before the first respondent for clarification about the pendency of the criminal case registered against him and the Petitioner did not appear before the authorities, but had filed the present Writ Petition. Further, the first respondent could not proceed with the issuance of passport on the ground that FIR has been registered against the Petitioner in Crime No.361 of 2015.

5.The learned Government Advocate (criminal side) appearing for the second respondent Police would submit that the petitioner has involved in a criminal case and that the crime being a heinous crime and hence, the authorities cannot issue passport to him. The case is in preliminary stage. The petitioner is under criminal investigation and only after the completion



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of trial, the first respondent can decide the issue and pass appropriate orders.

She would further submits that charge-sheet has been filed before the concerned Judicial Magistrate and the same was not taken on file.

6.The learned counsel for the petitioner produced a decision of this Court in the case of ***W.Jaihar William and others .vs. The State of Tamil Nadu and others reported in 2014(2) CWC 684***, wherein, it has been observed as follows:

"8.....the applications submitted by the Petitioners for passport were not considered by the third respondent for the reason that FIRs are pending against them. The Superintendent of Police , Tirunelveli, has filed counter affidavits stating that First Information Reports have been filed against the Petitioners for the alleged offences, stated supra, since they are involved in the agitation against the Koodankulam Nuclear Project. So far as the Petitioner in W.P(MD)NO.8349 of 2014 is concerned, the criminal case has been registered under Sections 147, 148, 294(b), 353 and 307 IPC. Since the FIRs are pending against the Petitioners, the third respondent has not considered the applications of the Petitioners, by placing reliance on section 6(2)(f) of the Passports Act, 1967.Section 6(2)(f) reads as follows:



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6. Refusal of passports, travel documents, etc---(i)....

(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 © of sub section (2) of Section 5 on any one or more of the following grounds and on no other ground namely:

(a) and (b).....

(f) that proceedings in respect of an offence alleged to have been committed by the Applicant are pending before the Criminal Court in India"

It is well settled legal principle that mere pendency of FIR cannot be construed as pendency of Criminal Proceedings in respect of the offences alleged to have been committed by the Applicant before the Criminal Court. Only after the Court takes cognizance of the offence alleged to have been committed by the Applicant, as stipulated under Section 190 of Cr.P.C, it can be construed as "proceedings pending before the Court".

7. This Court and various High Courts had allowed the Writ Petition of this nature, on the ground that unless and until the Judicial Magistrate takes cognizance of the offence, the respondents/Officials cannot mechanically refuse to issue passport to the parties, stating that FIR is pending and that mere pendency of FIR cannot be construed as pendency



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of criminal proceedings and the same cannot be a bar for issuance of passport to the parties concerned.

8.In view of the above settled position of law, this Court directs the first respondent to consider the application submitted by the petitioner in Application No.MD1075951423123 dated 08.11.2023, if it is otherwise in order and issue appropriate orders regarding issuance of passport to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

9.With the above direction, the Writ Petition stands disposed of. No costs.

11.01.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
skn

To
1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai – 625 002.



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2.The Inspector of Police
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V.BHAVANI SUBBAROYAN, J.

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