



W.P(MD)No.783 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.783 of 2024

Ibrahim Asan

.. Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
Trichy New Municipal Complex,
Thillainagar 7th Cross,
Trichy.

2.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to issue passport to the petitioner based on his Application dated 07.08.2023 in File No.TR2065651488523 pending before the first respondent by accepting the petitioner's explanation within a time frame.



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For Petitioner : Mr.T.Lenin Kumar
For R1 : Mr.G.Thalaimutharasu
Central Govt. Standing Counsel
For R2 :Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Petitioner has filed this Writ Petition seeking issuance of a Writ of Mandamus directing the first respondent to issue passport to the petitioner based on his Passport Application in No.TR2065651488523.

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 the petitioner applied for the issuance of passport through his application No.TR2065651488523. On receipt of the said application, the first respondent issued a letter on 14.08.2023 calling the petitioner for enquiry and give an explanation about the Crime No.81 of 2023 pending on the file of the second respondent police station. The petitioner's application for grant of passport was not



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considered by the Passport Authority, on the ground that an FIR is pending as against this petitioner. Hence the Petitioner has filed this Writ Petition for the relief stated supra.

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.81 of 2023.

5. The learned Government Advocate 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 learned Judicial Magistrate, Aranthangi 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:

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



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(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 of criminal proceedings and the same cannot be a bar for issuance of



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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.TR2065651488523, dated 07.08.2023, 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.

12.01.2024

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

PJL

To
1.The Regional Passport Officer,
Regional Passport Office,
Trichy New Municipal Complex,
Thillainagar 7th Cross, Trichy.



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2.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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