



W.P.(MD).No.748 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.02.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.748 of 2024

N.Arumugam

... Petitioner

VS.

1.The Regional Passport Officer,
Madurai Bharathi Ula Veethi,
Race Course Road,
Madurai.

2.The Inspector of Police,
District Crime Branch,
Dindigul.

3.K.Rahamathullah

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to impound the third respondent's passport bearing Passport No.L7898423 which is valid upto 12.03.2024 and for other reliefs.

For Petitioner
For R1

: Mr.P.Sivakumar
: Mr.V.Malaiyendran
Central Government Standing
Counsel
: Mr.S.S.Madhavan
Government Advocate (Crl.side)

For R-2



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ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the first respondent to impound the third respondent's passport bearing Passport No.L7898423 which is valid upto 12.03.2024 and for other reliefs.

2.The case of the petitioner is that he is doing agricultural coolie. He is having ancestral landed property comprised in Survey No.707/1 to an extent of 1 Acre, 74 cents situated at S.Pudhupatti, Sukampatti Village, Vedasandur Taluk, Dindigul District. Subsequently, the said property was mortgaged by his grandfather twice and subsequently, his grandfather has sold to an extent of 49 cents through a registered sale deed for a valuable consideration in favour of the third respondent's grandfather in the year 1972. Since 49 cents out of 1 acre, 74 cents was sold out to the third respondent's grandfather, the left out portion in the survey No.707/1 is only 1 acre, 25 cents for his grandfather. Contrary to this fact, the person, who purchased 49 cents from his grandfather, has sold out to an extent of 1 acre, 33 cents and for that, the third respondent



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has no right and title at all. If at all the third respondent wants to sell to any third person, he could sell only an extent of 49 cents alone and he sold more extent of land to the third parties. The third respondent has sold out the purchased land to an extent of 49 cents already and thereafter, without any manner of right and title, he sold once again to an extent of 1 Acre, 25 cents apart from 49 cents already sold. Since the petitioner's grandfather's land to an extent of 1 acre, 25 cents was sold out without any manner of right and title to one Sakthivel on 11.07.2005 through a Sale Deed duly registered as Document No.1432 of 2005 in the Sub-Registration Office, Vadamadurai, Dindigul District by the third respondent, father and his brother. Immediately, the petitioner lodged a complaint before the Superintendent of Police, Dindigul and the same was forwarded to the Inspector of Police, Anti Land Grabbing Special Cell, Dindigul District and the FIR was registered in Cr.No.14 of 2023 for the offences under Sections 465, 467, 468, 471 and 120(B) of IPC against the third respondent and his father, his elder brother and Sakthivel, who is the purchaser of the disputed subject matter of the land and they have separately filed anticipatory bail in CrI.O.P(MD)Nos. 11940, 13113 and 13026 of 2023. Insofar as the petitioner in



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CrI.O.P(MD)No.11940 of 2023 has been granted anticipatory bail on 30.06.2023 on the following conditions:-

“a. The petitioner and the sureties shall affix their photographs and left thumb impression in the sureties bond and the Magistrate may obtain a copy of their Aadhar Card or Bank Passbook to ensure their identity.

b.The petitioner shall reconvey the property which was sold out in favour of the third party of the defacto complaint within a period of two weeks, failing which, the anticipatory bail already granted shall stand cancelled automatically and the respondent is at liberty to secure the petitioner and proceed in accordance with law.

c.The petitioner shall report before the respondent police daily at 10.30 a.m., for the period of two weeks and thereafter as and when required for interrogation.”

3. After obtaining this order by the third respondent's father, he has sent a representation to the concerned Sub-Registrar, Vadamadurai, Dindigul District to cancel the sale deed, dated 11.07.2005 executed by him along with his sons and further requested him to reconvey the sold out property to the original owner at the relevant point of time, with regard to the power of the District Registrar to cancel any register



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document is pending before the Full Bench of this Court. At the time of registering the First Information Report, the third respondent was very much available in M.M.Kovilur, Dindigul District. Thereafter, the third respondent has gone to abroad wantonly and knowing fully well that the case was registered against him. When the third respondent is in UAE, the petitioner left with no choice except to lodge a complaint before the Superintendent of Police, Dindigul regarding absconding of the third respondent when the First Information Report is registered and pending against him. On receipt of the complaint, the police authority has not taken any steps to register the case. Under these circumstances, the petitioner has filed CrI.O.P.(MD)No.13685 of 2023 before this Court to direct the respondent therein to issue the lookout Circular against the accused No2, who is the third respondent herein in connection with Crime No.14 of 2023 on the file of the second respondent police. This Court passed the following order.

“2.When the matter was taken up for hearing, the learned Government Advocate (CrI.side) submits that the Accused Nos.2 & 3 are in Dubai and the lookout Circular has already been issued, a copy of which is filed to show that on



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24.07.2023 it has been issued.

3. Since the lookout circular has already been issued, the cause does not survive for the petitioner to proceed with the case. Accordingly, this petition is dismissed.”

4. The request made by the petitioner by filing the petition has been complied with and the criminal original petition has become infructuous on the ground of complying the request of the petitioner by the police authority. Since the third respondent has invited look out notice Circular against him, he left with no choice except to approach this Court by filing the petition for anticipatory bail before this Court in CrI.O.P(MD)No.15021 of 2023. In the anticipatory bail filed by the third respondent, he has emphatically stated in Para-11 to the effect that:-

“11. The petitioner is the law abiding citizen and he is ready to abide any condition imposed on him and the petitioner undertake that he will not tamper the witnesses and he will not away from the jurisdiction.”

5. By considering all these aspects, this Court was pleased to grant and anticipatory bail on 07.09.2023 on the following conditions:-



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“7. Accordingly, the Criminal Original Petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or on their appearance before the learned Special Court Land Grabbing Cases, Madurai on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties each for like sum of the satisfaction the learned Magistrate and the petitioner shall appear before the respondent police daily at 10.30 a.m., until further orders. The petitioner shall comply with the condition stipulated under Section 438 of Cr.P.C., scrupulously.

Since it is stated that the petitioner is an abroad, the petitioner shall appear before the concerned Judicial Magistrate within a period of one month from the date on which the order copy was made ready, failing which, the petition for Anticipatory bail will stand dismissed.”

6. Subsequently, in order to comply with the conditions imposed on him in the anticipatory bail order by this Court, the third respondent has come over to India to produce the sureties before the concerned Trial Court and accordingly, the third respondent has produced the sureties. Since the third respondent has complied with the conditions imposed on him in the anticipatory bail order, he has approached this Court by filing



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a Criminal Miscellaneous Petition before this Court in CrI.M.P(MD)No. 15882 of 2023 in CrI.O.P.(MD)No.15021 of 2023 for the purpose of relaxing the conditions imposed on him. Subsequent to registering the First Information Report, the charge sheet was also laid in C.C.No.703 of 2023 on the file of the Judicial Magistrate No.II, Dindigul. The learned Judicial Magistrate has issued summon to the accused persons calling them to appear before the concerned Court. The petitioner has made an application before the Passport Authority for renewing his passport. Thereafter, the third respondent has come to know the fact that the show cause notice was issued against him for why his passport is not impounded and thereafter, he has filed a writ petition in W.P(MD)No. 26453 of 2023 before this Court praying for Writ of Mandamus forbearing the first respondent from impounding his Passport No.L-7898423 and direct the first respondent to accept the renewal of Passport Application.

This Court passed the following order:-

“3. When the matter was taken up for hearing, the learned Government Advocate (Crl.side) submitted that the Criminal Case registered against the petitioner has since been charge sheeted and it has been taken on file in



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C.C.No.703 of 2023 on the file of the Judicial Magistrate No.II, Dindigul.”

4. The petitioner is given liberty to move the trial Court for the relief now sought for. As and when such miscellaneous petition is filed, it shall be numbered and disposed of within a period of three weeks thereafter. The learned Trial Court Judge shall bear in mind that right to travel abroad is a fundamental right. The petitioner's career and avocation may be at stake if she is denied the right to go abroad. Therefore, the trial Court unless there are extraordinary circumstances shall not deny relief. Of Course, the period of validity of passport will have to be restricted. It is also open to the trial judge to stipulate appropriate conditions to ensure that the prosecution is not stalled on the account of the petitioner's absence from India. If necessary, the applicant can be directed to file an application under Section 205 of Cr.P.C., by executing a Special Vakalat.

5. Based on the order passed by the Trial Court, the petitioner shall move the jurisdictional regional Passport Officer, who shall dispose of the petition mentioned application in terms of the said order.”



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7. Therefore, it is crystal clear that the third respondent has given an undertaking before this Court to the effect that he will not go away from the jurisdiction of the concerned Court where he surrendered and obtained bail and further this Court was pleased to direct the third respondent to approach the concerned jurisdictional Magistrate Court for the purpose of forbearing the passport authority from impounding his passport and on receiving such petition by the concerned Trial Court, it shall be numbered and disposed of within a period of three weeks thereafter. By violating his undertaking given in the bail petition and also violating the direction issued by this Court in writ petition, the third respondent has left the country without complying with the direction and undertaken given in the Anticipatory bail petition in para-11. It is not known to the petitioner that when the direction given by this Court its very clear and the Passport Authority has been arrayed as Respondent No.1 in the writ petition in W.P(MD)No.26453 of 2023, the first respondent without honouring the direction issued by this Court and without verifying the fact that whether the third respondent has approached the concerned jurisdictional Court to obtain an appropriate order for forbearing the Passport Authority to impound his passport has



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allowed the third respondent to go abroad. The third respondent has not fulfilled the Anticipatory bail conditions.

8. The learned Central Government Standing Counsel appearing for the first respondent would submit that appropriate direction may be given to the first respondent to consider the petitioner's request in accordance with law, within a time frame.

9. The first respondent has filed counter affidavit. It is seen from the counter affidavit that the third respondent has filed an application for re-issue of passport at Embassy of India, Abu Dhabi U.A.E., on 15.01.2024 in lieu of expiring of validity of existing passport No.L7898423 dated 13.03.2024 valid upto 12.03.2024. The office of Superintendent of Police, Dindigul District in their police verification report to the re-issue of passport application submitted by the third respondent has uploaded through online an adverse police report to Embassy of India, Abu Dhabi informing that a criminal case registered in DCB-Dindigul under section 120(b), 464, 467, 468 and 471 of IPC is charged on 07.09.2023 and has not taken on file. There is no



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applications submitted by the third respondent is pending at the office of the first respondent for processing. However, a copy of the writ petition in W.P(MD)No.748 of 2024 filed by Shri.N.Arumugam has been sent to Embassy of India, Abu Dhabi through email for their information and further action.

10. In view of the above, considering the limited scope of the prayer sought for by the petitioner, without going into the merits of the matter, this Court directs the first respondent to consider the case of the petitioner for impounding the passport of the third respondent bearing Passport No.L 7898423 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

11. Accordingly, this writ petition is disposed of. No costs.

Index:Yes/No
NCC:Yes/No
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- 2.The Inspector of Police,
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V.BHAVANI SUBBAROYAN,J.

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