



W.P.(MD).No.2259 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD).No.2259 of 2024

Thirumalaisamy

... Petitioner

vs.

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

2.The Sub Inspector of Police,
Sendhamaram Police Station,
Tenkasi District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to process the petitioner's application bearing number MD2076171294324 for reissue of passport within a time frame fixed by this Court without reference to the case in Crime No.399/2021 on the file of the 2nd respondent police, which is pending for investigation.

For Petitioner	: Mr.R.J.Karthick
For R1	: Mr.G.Rajaraman
	Standing counsel



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For R2

: Mrs.M.Aasha

Government Advocate (Crl.side)

ORDER

This writ petition has been filed for issuance of a writ of Mandamus, directing the 1st respondent to process the petitioner's application bearing number MD2076171294324 for re-issuance of passport, without reference to the case in Crime No.399 of 2021 on the file of the 2nd respondent police, which is pending for investigation.

2. When the matter is taken up for hearing today, the learned Government Advocate (Crl.side) appearing for the second respondent would submit that F.I.R. has been registered against the petitioner in Crime No.399 of 2021 for the offences under Sections 147, 448, 294(b), 427, 363, 379, 506(ii) and 109 of I.P.C., and the investigation is pending.

3. The learned counsel appearing for the petitioner has produced the 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:



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"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)....

(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"



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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".

4. 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 F.I.R., is pending and that mere pendency of F.I.R., cannot be construed as pendency of criminal proceedings and the same cannot be a bar for issuance of passport to the parties concerned.

5. Considering the above said submissions, this Court directs the petitioner to give an undertaking before the second respondent police that he will not indulge in such activities and request to pardon him within a period of four weeks from the date of receipt of a copy of this



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order. On such undertaking being given, the first respondent is directed to consider the petitioner's application bearing number MD2076171294324, dated 13.01.2024 and pass appropriate order regarding re-issuance of passport to the petitioner, within a period of four weeks thereafter.

6. With the above directions, this Writ Petition is disposed of. No costs.

02.02.2024

akv

To

1. The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Veethi,
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Madurai 625 002.
2. The Sub Inspector of Police,
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V.BHAVANI SUBBAROYAN,J.

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