



WEB COPY



W.P.(MD)No.26908 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2024

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.26908 of 2024

Manoharan

... Petitioner

Vs

1.The Regional Passport Officer,
Regional Passport Office,
Bharathi Ula Street,
Race Course Road,
Madurai District.

2.The Inspector of Police,
Elayangudi Police Station,
Sivagangai District.
(Crime No.239 of 2016)

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to issue Passport to the petitioner in reference to the petitioner's Application in File No. MD1076951123324, dated 19.09.2024 by considering the petitioner's representation dated 05.11.2024 within the stipulated time fixed by this Court.

For Petitioner : M/s.K.Malaimaran

For Respondents : M/s.Narayan Ram
Central Government Standing
Counsel for R1
Mr.K.Gnanasekaran
Government Advocate(Crl. Side) for R2



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed for issuance of a Writ of Mandamus, directing the 1st respondent to issue Passport to the petitioner in reference to the petitioner's Application in File No. MD1076951123324, dated 19.09.2024 by considering the petitioner's representation dated 05.11.2024 within the stipulated time.

2.The petitioner has made an application for passport on 19.09.2024 to the first respondent. The first respondent authority had sent a communication in letter dated 03.10.2024 requiring the petitioner to make an explanation with respect to the adverse police verification report received from the second respondent mentioning the crime No.239 of 2016 for the alleged offences under Sections 147, 294(b), 353 and 506(ii) of IPC had been registered as against the petitioner. Following which on 05.11.2024, the petitioner had made a representation seeking to issue passport to him. The same has not been considered, the present writ petition has been filed.

3.When the matter was taken up for hearing today, the Mr.K.Gnanasekaran, learned Government Advocate(Crl.side) on instructions submitted that the above said case in Crime No.239 of 2016, of Elayangudi



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Police Station, Sivagangai District has culminated in filing online final report on 31.01.2019 before the Judicial Magistrate, Elayangudi, Sivangangai District. However, the same has not been taken on file so far.

4.It is settled proposition of law that as held in the case of ***Matchumari China Venkatareddy and Others Vs State of Andhra Pradesh reported in 1994 Criminal Law Journal 257***, that until the charge sheet has been filed, a Magistrate cannot be said to have taken cognizance of any offence and that the Magistrate can take the cognizance of the offence and directing the issue of process only on receipt of a police report. However, until and unless, a Magistrate had issued process to the accused persons, it cannot be considered that the judicial Act has commenced. The jurisdiction Act commences only when the charge sheet is in order and the Magistrate proceeds further taking cognizance of the offences. However, in this case, it is made clear by the learned Government Advocate(Crl.side) that the matter has not been taken on file by the learned Judicial Magistrate concerned so far.

5.The Hon'ble Division Bench of this Court in **W.A.No.902 of 2023, dated 02.06.2023** has observed that a person cannot travel abroad without the permission of the Court where the criminal case is pending. However, the same would not be an impediment for the passport authority to consider the application for renewal of the passport. No doubt, if a person has to travel



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abroad and the criminal case is pending, then unless the Magistrate or the sessions Court where the criminal case is pending permits a person to travel abroad, he cannot travel abroad. The relevant portion of the above said judgment is extracted as follows:-

(i) The writ appellant shall process the application of the first respondent for renewal of passport without insisting for permission of the Court, where a criminal case is pending against the first respondent. If the first respondent is travelling abroad, then the first respondent would be required to seek permission from the Court where the criminal case is pending.

(ii) Decision shall be taken as above, within one month.”

6.Though the said case with respect to renewal of the passport the *lis* in hand with regard to issuance of a fresh passport. In view of the fully fortified by the judgment of the Hon'ble Division Bench of this Court in the above said writ appeal, this Court hereby direct the first respondent to process the application of the petitioner for renewal of the passport without insisting for permission of the Court where a criminal case is pending as against the petitioner.

7.However, it is made clear that if the petitioner intends to travel abroad, then the petitioner would be required to seek the permission from the Court where the criminal case is pending.



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8. With the above said directions, this writ petition stands disposed of.

No costs.

12.11.2024

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

To

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Race Course Road,
Madurai District.

2. The Inspector of Police,
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L.VICTORIA GOWRI, J.

RJR

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