

W.A.(MD)No.303 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.03.2025

PRONOUNCED ON : 25.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.303 of 2025

and

C.M.P.(MD)No.3863 of 2025

Aynul Yakheen Ibrahim

... Appellant

Vs.

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

2.The Commissioner of Police,
Madurai City,
Alagarkoil Main Road,
Madurai.

3.The Inspector of Police,
C1, Thideernagar Police Station,
Madurai, Madurai District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.31482 of 2024, dated 09.01.2025.



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For Appellants	:Mrs.N.Krishnaveni Senior Counsel for Mr.A.Robinson
For R1	:Mr.K.Govindarajan Deputy Solicitor General
For R2 and R3	:Mr.A.Albert James Government Advocate (Criminal side)
For proposed R4	:Mr.Mahaboob Athif

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the writ petitioner against the order dated 09.01.2025 passed in W.P.(MD)No.31482 of 2024.

2. The writ petition was filed for issuance of a Writ of Mandamus, to direct the 1st respondent to renew and reissue the passport to the petitioner in his application vide File No.MD1077171654524, dated 02.12.2024, pending on the file of the 1st respondent within a time stipulated.

3. The writ petitioner is already having Passport No. Z4045513 and the same is likely to expire on 04.10.2026. In the meanwhile, the papers



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enclosed in the passport were exhausted on stamping of visa due to the writ petitioner's frequent travel. On 02.12.2024, the writ petitioner submitted an application seeking re-issuance of passport along with necessary documents. The passport authority had directed the writ petitioner to appear before the authority seeking explanation regarding the criminal case registered against the writ petitioner in Crime No.82 of 2022 and charge sheeted in S.C.No.90 of 2023 on the file of the Additional Judicial Magistrate No.1, Madurai. Hence, the writ petitioner had filed the writ petition seeking the relief to renew and re-issue the passport.

4. After considering the rival submissions, the Writ Court has held that the writ petitioner is at liberty to move the Additional Judicial Magistrate No.1, Madurai, for the said relief. While the Writ Court passing the order had observed that the writ petitioner has fundamental right to travel and to carry on his avocation, at the same time had observed that the validity of the passport will have to be restricted. Aggrieved over the direction to move the Judicial Magistrate and also aggrieved over the observation of restriction, the writ petitioner has preferred the present appeal.

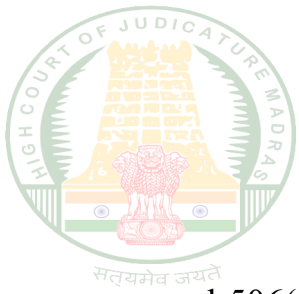


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5. The contention of the writ petitioner is that the validity of passport cannot be restricted on the ground of pending criminal proceedings and the same is violating the fundamental right. Further, the appellant is not convicted and the criminal proceedings are still pending. On the other hand, the 1st respondent Passport Officer had submitted that the writ petitioner ought to have obtained an order from the “concerned Court” and then only new passport can be issued. The police officials submitted that if the passport is granted for 10 years as claimed by the writ petitioner, the Criminal Trial would be hampered. Further, writ petitioner has filed Crl.O.P.(MD)No.1257 of 2025, to quash the S.C.No.90 of 2023 and this Court has already granted interim stay of the said proceedings, hence the said criminal case cannot be concluded because of the interim stay granted in quash petition. Therefore, if the passport is granted for longer period, the writ petitioner cannot be secured in the criminal case. Hence, there was serious objections by the respondents.

6. After considering the rival submissions, this Court had given its anxious consideration. It is seen that the criminal case was filed against the appellant / writ petitioner under Sections 147, 148, 149, 294(b), 323, 324, 307



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and 506(ii) of I.P.C. The appellant was accused for rioting in a dispute among the members of Jamath.

7. Since the criminal case is pending, the passport authorities would insist to produce order from the concerned Court, by relying on the Notification No. GSR 570(E), dated 25.08.1993 issued by Ministry of External Affairs, wherein it states that the citizens of India against whom proceedings in respect of offense alleged to have been committed are pending before Criminal Court in India and who produce orders from the Court concerned permitting them to deport from India. The “concerned Criminal Court” alone is empowered to grant orders for a specified period for granting passport. If no period is mentioned, it can be issued for one year. The relevant portion of the said notification is extracted hereunder:

- “(a) the passport to be issued to every such Citizen, shall be issued,*
(i) for the period specified in the Order of the Court referred to above,
if the Court specifies a period for which the Passport has to be issued,
or
(ii) if no period either for the issue of passport or for the travel abroad
is specified in such order, the passport shall be issued for a period of
One Year.
(iii) if such order gives permission to travel abroad for a period less



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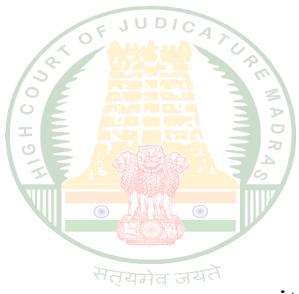
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than One Year, but does not specify the period of validity of the passport, the passport shall be issued for One Year.

(iv) If such order gives permission to travel abroad for a period exceeding one year; and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.”

8. The contention of the passport authorities is that the writ petitioner can very well approach the Additional Judicial Magistrate No.1, Madurai, by filing a petition in S.C.No.90 of 2023 and obtain an order. But it is seen that the writ petitioner had preferred a quash petition in CrI.O.P.(MD)No.1257 of 2025, to quash the S.C.No.90 of 2023 and obtained an interim stay. Therefore, now, the Judicial Magistrate cannot entertain any petition while stay is in force. When stay is in force then the “concerned Court” would be High Court as held in W.P.(MD)No.7056 of 2017 reported in **2017 3 CTC 493** wherein it is held as under:

“From the reading of the aforesaid Notification, in the opinion of this Court, the expression “concerned Court” will mean the Court before whom the person is facing the prosecution. In this case, had there not been a quash petition pending, the “concerned Court” would be the learned Judicial Magistrate V, Trichy before whom the petitioner is facing Trial in C.C.No.21 of 2015. However, this Court, in exercise of



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its power under section 482 of Cr.P.C. has admitted Cr.O.P.(MD)No. 3533 of 2017 has granted stay of all further proceedings in C.C.No.21 of 2015 on the file of Judicial Magistrate V, Trichy. Under such circumstances, the expression “concerned Court” in the context of the present case will mean the High Court and not the Judicial Magistrate.”

Therefore, this Court is of the considered opinion that when there is any stay in quash petition, then the High Court is the “concerned Court”. Hence the order passed by Writ Court directing the writ petitioner to approach Magistrate Court is incorrect.

9.The next question is whether the writ petitioner is entitled to passport for restricted period. If the writ petitioner is granted 10 years passport, it would be difficult to secure him before the Criminal Court. If it is issued for one year, the appellant / writ petitioner would face difficulty in getting visa from other countries. Therefore, in order to meet the ends of justice, this Court is of the considered opinion that the appellant / writ petitioner may be granted passport for 5 (five) years. The writ petitioner shall give an undertaking as contemplated by clause (d) of the Notification dated 25.08.1993. And the writ petitioner shall appear before the Criminal Court as and when necessary.



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10. With the above said observations and directions, the writ appeal is allowed of and C.M.P.(MD)No.3863 of 2025 is closed. No costs.

[J.N.B., J.] [S.S.Y., J.]
25.03.2025

Index : Yes / No

Tmg

To:

- 1.The Regional Passport Officer,
Madurai Regional Passport Office,
Bharathi Ula Veethi,
Race Course Road,
Madurai-625 002.
- 2.The Commissioner of Police,
Madurai City,
Alagarcoil Main Road,
Madurai.
- 3.The Inspector of Police,
C1, Thideernagar Police Station,
Madurai, Madurai District.



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