

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

Crl.MC.No. 317 of 2015 ()

**LP. NO. 73/2005 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PARAVOOR
CRIME NO. 381/2004 OF CHATHANNOOR POLICE STATION ,KOLLAM DISTRICT**

PETITIONER/ACCUSED NO.1:

**PRASAD, AGED 34 YEARS,S/O SUNDARESAN,
KADAMPRA THEKETHIL VEEDU, VARINJAM,
KALLUVATHUKKAL, KOLLAM DISTRICT.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENT/STATE:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031 (CRIME NO. 381/2004 OF
CHATHANNOOR POLICE STATION, KOLLAM DISTRICT)**

BY PUBLIC PROSECUTOR SMT. P.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.M.C.No.317 of 2015

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Dated this, the 19th day of January, 2015.

ORDER

First accused in L.P.No.73/2005 (Crime No.381/2004 of Chathannoor Police Station, Kollam District) before the Munsiff Magistrate Court, South Paravur has filed this application seeking certain directions under Sections 482 and 483 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is arrayed as the first accused in Crime No.381/2004 of Chathannoor Police Station along with others alleging offence under Section 379 read with Section 34 of Indian Penal Code. After investigation, final report was filed. During crime stage, he was granted bail. After final report was filed, he could not appear. So, case against him was split up and transferred to register of long pending cases and now pending as L.P.No. 73/2005 before the Munsiff Magistrate Court, South Paravur. Now, non bailable warrant is pending against him. He is prepared to surrender, but, he apprehends that he will be remanded to custody and his bail application will not be

considered. So, he has no other option except to approach this court seeking the following relief:

"To direct the Judicial Magistrate of First Class, South Paravur, to recall the non-bailable warrant pending against the petitioner in L.P.No.73/2005 (Crime No.381/2004 of Chathannoor Police Station, Kollam District) and further be pleased to enlarge the petitioner on bail on the date of surrender itself."

3. Considering the nature of relief claimed, this court felt that the petition can be disposed of today itself after hearing the Counsel for the petitioner and the learned Public Prosecutor.

4. The Counsel for the petitioner submitted that if he surrenders, he will be remanded to custody without considering his bail application unless a direction is given by this court in this regard.

5. The application was opposed by the Public Prosecutor on the ground that he is an absconding accused.

6. It is an admitted fact in the petition itself that he was arrayed as first accused in Crime No.381/2004 of Chathannoor Police Station along with others alleging offence under Section 379 read with Section 34 of Indian Penal Code

and during crime stage, he was on bail. It is also in a way admitted in the petition itself that after final report is filed and the case was taken on file, he could not appear as he was working in Gulf country and so, case against him was split up and refiled and since he could not appear in spite of coercive steps taken, his case was transferred to register of long pending cases and now pending as L.P.No.73/2005 before the Munsiff Magistrate Court, South Paravur. The apprehension of the petition that if he surrenders, he will be remanded without considering his bail application is without any basis as this court has, in several cases of this nature, consistently observed that there is a duty cast on the judicial officers of the criminal courts to consider and dispose of the bail applications if any filed on the date of the surrender itself as far as possible. So, there is no necessity to issue any direction as such as claimed in the petition. However, considering the apprehension mentioned in the petition, this court felt that the petition can be disposed of as follows:

If the petitioner surrenders before the Munsiff Magistrate Court, South Paravur in L.P.No.73/2005 (Crime No.381/2004 of Chathannoor Police Station), then, the learned magistrate is directed to consider

and dispose of the bail application on the date of filing of the application itself as far as possible after hearing the Assistant Public Prosecutor of that court in accordance with law.

With the above direction and observation, the petition is disposed of.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge