

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. 323 of 2015 ()

CRIME NO. 1120/2011 OF HOSDURG POLICE STATION, KASARAGOD DISTRICT

PETITIONER/2ND ACCUSED :

THAHA,
S/O. KUNHABDULLA HAJI, AGED 25 YEARS
RESIDING AT ATHINHAL, AJANUR VILLAGE, HOSDURG TALUK
KASARGOD DISTRICT.

BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENT/STATE :

THE STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER
HOSDURG POLICE STATION, KASARGOD DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031

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.323 of 2015

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

O R D E R

Second accused in C.P.No.92/2014 (Crime No.1120/2011 of Hosdurg Police Station, Kasaragod District) before Judicial First Class Magistrate Court-I, Hosdurg has filed this application seeking certain directions under Section 482 and of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is arrayed as the second accused in Crime No.1120/2011 of Hosdurg Police Station, Kasaragod District along with others alleging offence under Sections 143, 147, 148, 326, 307, 153 (A) read with Section 149 of Indian Penal Code. After investigation, final report was filed. After final report was filed, the learned magistrate has taken cognizance of the above case as C.P.No.92/2014 on the file of Judicial First Class Magistrate Court-I, Hosdurg. Since the petitioner was working in Gulf country, he was not aware of the pendency of the above crime and hence he could not surrender before the investigating officer in connection with the above crime and the learned magistrate has issued non bailable warrant against the

petitioner. 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 Learned Judicial First Class Magistrate's Court-I, Hosdurg to consider the bail application being filed by the petitioner in C.P.No.92/2014 (Crime No.1120/2011 of Hosdurg Police Station) on its file and enlarge the petitioner on bail in the above case on the date of his surrender itself, on such conditions as deems fit and proper in the circumstance of the case, so as to secure the ends of justice."

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 second accused in Crime No.1120/2011 of Hosdurg Police Station, Kasaragod District along with others alleging offence under Sections 143, 147, 148, 326, 307, 153 (A) read with Section 149 of Indian Penal Code. It is also in a way admitted in the petition itself that after final report is filed the case was taken on file as C.P.No.92/2014. Since he did not appear, non bailable warrant has been issued and the same is pending against him. 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 Judicial

First Class Magistrate Court-I, Hosdurg in C.P.No.92/2014 (Crime No.1120/2011 of Hosdurg 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.

Bb

[True copy]

P.A to Judge