

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

CrI.MC.No. 221 of 2014

CRIME NO. 2764/2012 OF CENTRAL POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED NOS.1 & 2:

1. SHAMEEMA @ SHERMI, AGED 30,
W/O.SANTHOSH, ANSALANA HOUSE, GANDHI NAGAR COLONY
THEKKADI, KUMALY VILLAGE, IDUKKI DISTRICT.

2. SHANAVAS @ RAFEEQ AGED 36,
S/O.HAMEED KUNJU, IDAVANATTU PADEETTATHIL HOUSE
K.S.PURAM, KARUNAGAPPILLY VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.ANIL K.MOHAMMED

RESPONDENTS/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 221 of 2014

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A- CERTIFIED COPY OF THE ORDER DTD.30.12.2013 IN
C.M.P.NO.6415 OF 2013 OF THE CHIEF JUDICIAL MAGISTRATE COURT,
ERNAKULAM.

//True Copy//

P.S.To Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 221 of 2014

Dated 9th July, 2015

ORDER

1. This petition under Section 482 of the Code of Criminal Procedure is filed by accused Nos.1 and 2 in C.C.No.89 of 2013 on the files of the Chief Judicial Magistrate Court, Ernakulam. The offence alleged against the accused are under Sections 406, 420, 343, 120(B) and 506(1) r/w 34 IPC and Sections 5, 6(3) & 9 of the Immoral Traffic (Prevention) Act.

2. The petitioners were arrested by the police during the crime stage and their passports were produced before Court during the course of investigation. After completion of investigation, charge sheet was laid before the Chief Judicial Magistrate Court, Ernakulam, and the case is now pending as C.C.No.89 of 2013. It is submitted that the petitioners appeared before the Magistrate Court

pursuant to summons and they were enlarged on bail. They filed an application for getting back their passport which was originally seized by the police and produced before the learned Magistrate during the course of investigation. The petition filed as C.M.P.No.6415 of 2013 by the petitioners herein was dismissed by the learned Magistrate as per order dated 30.12.2013. The said order was challenged in the above captioned Criminal Miscellaneous Case.

3. When the case had come up for admission, as per order dated 7.1.2014 in Crl.M.A.286 of 2014, this Court had directed the Chief Judicial Magistrate Court, Ernakulam, to release the passport to the petitioners forthwith, after accepting the certified copy of the same in substitution thereof, so as to enable the petitioners to go abroad in connection with their employment, subject to such terms and conditions as the learned Magistrate may deem fit.

4. In terms of the said order, the learned Magistrate, as per proceedings dated 27.1.2014, has ordered release of the passport subject to the condition that the petitioners shall execute a bond for Rs.2,00,000/- with two solvent sureties each for the like amount and the sureties were also directed to furnish the original title deeds. It was further ordered that if the petitioners fail to appear before the Court, to face the trial, steps be initiated against them to impound the passport after forfeiting the bond. The petitioners are aggrieved by that part of the order as per which the learned Magistrate had directed them to furnish the original of the title deeds.

5. I have heard the learned counsel for the petitioners and also the learned public prosecutor .

6. According to the petitioners, the condition directing them to produce the original title deeds are onerous and

it was prayed that in substitution, the bond amount may be enhanced or such other condition may be imposed to safeguard the appearance of the petitioners before Court at the stage of trial. The counsel for the petitioners has submitted that for the purpose of ascertaining solvency of the sureties, they are prepared to produce the original of the title deeds before the learned Magistrate but they may not be directed to deposit the same. Learned counsel submits that if the passport is released, the petitioners can go abroad and that will cooperate with the trial proceedings. It is also submitted that the husband of the 1st petitioner is undergoing treatment for renal failure and the 2nd petitioner is the sole bread winner of the family. Denial to go abroad and to pursue their employment abroad will be disastrous, is the submission of the counsel.

7. On the other hand, the learned Public Prosecutor has submitted that the offence alleged is serious and there is

no reason why the conditions ordered by the learned Magistrate be relaxed.

8. It has to be appreciated that the petitioners were employed abroad and there is no justification, in the facts and circumstances, to deprive them from pursuing their employment. At the same time, the learned Magistrate was justified in imposing conditions to secure the appearance of the petitioners pursuant to the order passed by this court to release the passport. I take note of the submission of the learned counsel that the petitioners are ready to furnish certified copies of the original passport and shall also furnish details of their employment abroad and their address of stay. To deny the petitioners their right to travel abroad and earn their livelihood till the matter becomes ripe for trial will not be justified.

9. I am of the considered opinion that, in the facts and

circumstances, the condition in the order dated 27.1.2014 in C.C No 89 of 2013 of the Court of the Chief Judicial Magistrate, Ernakulam, that the sureties shall furnish the original of the title deeds, can be relaxed/ modified.

10. In the result , this petition is disposed of modifying the order dated 27.1.2014 passed by the Chief Judicial Magistrate , Ernakulam. Release of the passport shall be subject to the following modified conditions.

(i) Petitioners shall state the period of stay abroad, along with employment/work details before the learned Magistrate and furnish their complete residential and employment/work address.

(ii) Petitioners shall undertake that during the period of their absence from Court, they will be represented by a counsel whose name and address will be furnished before the learned Magistrate.

(iii) Petitioners shall produce a certified copy of the passport as ordered in Crl M.A No 286/14 dated 7.1.2014.

(iv) Petitioners shall take all steps to co-operate with the trial proceedings .

(v) Petitioners shall execute a bond for Rs.3,00,000/- (Rupees Three lakhs only) each, with two solvent sureties each for the like sum to the satisfaction of the Court below, undertaking to comply with the above conditions. It is made clear that it will be open to the petitioners to offer the same sureties who have executed bond earlier, provided they have landed properties worth Rs.3,00,000/- each.

(vi) On complying with the above conditions, learned Magistrate may consider the request of the petitioners for releasing the passport for enabling them to go abroad.

(vii). If the petitioners fail to appear before the Court below during the stage

of trial, the learned Magistrate shall initiate appropriate proceedings in accordance with law to impound the passport in terms of the directions in **Shanavaz Babu V State of Kerala (2012 (3) KLT 701)** after forfeiting the bond.

The Criminal Miscellaneous Case is disposed of as above.

Sd/-

**RAJA VIJAYARAGHAVAN.V.
Judge**

MrCs

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