

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

Crl.MC.No. 2302 of 2015 ()

**AGAINST THE ORDER IN CMP NO.5447/2014 IN C.C.NO.609/2011 OF JFCM-II,
PERINTALMANNA, DATED 04.12.2014 &
AGAINST THE ORDER IN CRL.M.C.NO.6637/2014 OF THE HON'BLE HIGH COURT,
DATED 25.11.2014 IN CRIME NO. 299/2011 OF MELATTUR POLICE STATION,
MALAPPURAM.**

PETITIONER(S)/PETITIONER/ACCUSED A4:

**SUNIL BABU,
S/O. VELAYUDHAN, POOLAKAL HOUSE, PALLIKKUNNU,
CHUNGAM, PATTIKKAD, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.SAMSUDIN
SRI.JITHIN LUKOSE**

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE MELATTUR ,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT. MADHU BEN.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

:2:

Crl.MC.No. 2302 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1: TRUE COPY OF THE FINAL REPORT IN CRIME NO.299/2011 OF
MELATTUR POLICE STATION.**

**ANNEXURE A2: TRUE COPY OF THE COPY OF THE ORDER DATED 25.11.2014 IN
CRL. MC 6637/2014.**

**ANNEXURE A3: TRUE COPY OF THE ORDER DATED 4.12.2014 CMP 5447/2014 OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
PERINTALMANNA.**

RESPONDENT(S)' EXHIBITS : NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

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Crl. M.C. No.2302 of 2015

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Dated this the 24th day of April, 2015

ORDER

This is an application filed by the petitioner to modify the condition imposed by the court below and directed the magistrate to release the passport under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that, the petitioner was arrayed as 4th accused in C.C.609/2011 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna. It was originated on the basis of Crime No.299/2011 of Melattur police station, alleging offences under Section 143, 147, 341, 323, and 324 read with Section 34 of the Indian Penal Code and he was charge-sheeted along with four accused persons. After investigation final report was filed and it was taken on file as C.C.No.609/2011 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna. Thereafter he appeared and he was released on bail. Later he obtained

job in Saudi Arabia and so he could not appear. Other accused, except first accused faced trial and the prosecution witnesses were examined and the accused were questioned under Section 313 of the Code of Criminal Procedure. Since he was absconded at that time, the case against him was split up and refilled as C.C.No.107/2014. Since he apprehended that, he will be remanded on his appearance, he moved this court by filing Crl.M.C.No.6637/2014 and this court directed the petitioner to surrender and directed the magistrate to consider and dispose of the bail application on the date of filing the application itself as per Annexure-2 order. Accordingly, he surrendered before the court below and he was released on bail, on executing a bond for ₹20,000/- and also with sureties and also surrender his passport. Accordingly he surrendered his passport. His visa expires on 27.04.2015. If he was not permitted to go abroad, he will lose his employment. So he has no other remedy except to approach

this court, seeking the following relief:

“It is most humbly prayed that this hon'ble court may be pleased to modify the condition No.2 in Annexure-A3 order, direct the Judicial First Class Magistrate Court-II, Perinthalmanna to release the passport of the petitioner and permit the petitioner to leave for Saudi Arabia on appropriate terms and conditions in the interest of justice.”

3. Heard the counsel for the petitioner and Public Prosecutor.

4. The counsel for the petitioner submitted that, he will be satisfied with the direction to consider the application filed by him for release of the passport for a temporary period for renewing the visa and go abroad as provided in **Asok Kumar v. State of Kerala [2009(2) KLT 712]** and **Muhammed v. State of Kerala [2012(4) KLT 655]**.

5. The application was opposed by the Public Prosecutor.

6. On going through the allegations made in the petition itself, the directions to surrender passport to ensure the presence of the petitioner for trial cannot be said to be illegal. But however, if the trial of the case will take

time and if the visa is likely to be expired and for renewing his visa, he will have to go abroad and the passport is required for that purpose, then, if he files an application before the Magistrate Court for that purpose, that court has to consider and dispose of the same as per the directions given in the dictum laid down in **Asok Kumar v. State of Kerala [2009(2) KLT 712]** and **Muhammed v. State of Kerala [2012(4) KLT 655]**. So under the circumstances, this court feels that, there is no necessity to interfere with the order passed, but at the same time, the petition can be disposed of, giving direction to the magistrate to consider the application if any filed by the petitioner for that purpose and dispose of the same. So the application is disposed of as follows:

If the petitioner applies before the Judicial First Class Magistrate Court-II, Perinthalmanna, for releasing his passport for the purpose of going abroad temporarily to renew the visa, then the

learned magistrate is directed to consider and dispose of the application on the date of filing of the application itself, after hearing the Assistant Public Prosecutor of that court, considering the dictum laid down in the decisions reported in Asok Kumar and Muhammed's case (supra).

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

Office is directed to hand over the copy of the order to the counsel for the petitioner on usual terms as per rules at the earliest, so as to enable him to produce the same before the court below for getting the relief mentioned in the order. Office is also directed to communicate this order to the court below by fax, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge