

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. 2549 of 2015 ()

AGAINST THE ORDER IN LPC 186/2011 of J.M.F.C.-II, HOSDRUG
CRIME NO. 46/2007 OF VELLARIKUNDU POLICE STATION , KASARGOD

PETITIONER/ACCUSED:

FRANCIS JOSEPH @ SHIBU, AGED 38 YEARS,
S/O.JOSEPH, RESIDING AT PERUMPADA POTHYIL,
PALAVAYAL P.O., CHAVARAGIRI, VELLARIKUNDU TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENT/STATE:

THE STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER,
VELLARIKUNDU POLICE STATION, KASARAGOD DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, 682031.

BY PUBLIC PROSECUTOR SMT.M.T. SHEEBA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.M.C.No.2549 of 2015
.....

Dated this the 24th day of April, 2015.

O R D E R

This petition is filed by the petitioner, who is the accused in LPC.No.186/2011 on the file of the Judicial First Class Magistrate Court-II, Hosdurg for issuing a direction under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner was arrayed as the accused in Crime No.46/2007 of Vellarikundu police station registered on the basis of a private complaint filed by the defacto complainant, the wife of the petitioner, alleging an offence under section 498 A of the Indian Penal Code, which was forwarded to the police for investigation and after investigation, final report was filed and it was taken on file as C.C.No.288/2009 on the file of the Judicial First Class Magistrate Court-II, Hosdurg. Earlier the petitioner was arrested, produced and released on bail. But when the case was posted for evidence, he could not appear and so the case was transferred to register of long pending cases as LPC.No.186/2011 and non bailable warrant is pending against

him. Since non bailable warrant is pending against him, he apprehends that even if he surrenders, his bail application will not be considered and he will be remanded to custody. So the petitioner has no other remedy except to approach this Court seeking the following relief:

“On these and other grounds to be urged at the time of hearing it is most humbly prayed that this Hon'ble Court may be pleased to direct the learned Judicial First Class Magistrates Court-II, Hosdurg to consider the bail application being filed by the petitioner in Crime No.46/2007 of Vellarikundu police station, Kasaragod district which is now pending as L.P.C.No.186/2011 on the files of the learned Judicial First Class Magistrate's Court-II, Hosdurg for 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. Heard the counsel for the petitioner and the learned Public Prosecutor.

4. Considering the nature of relief claimed in this petition, this Court felt that the petition can be disposed of today itself.

5. The counsel for the petitioner submitted that though he is prepared to surrender, in view of the pendency of non bailable warrant, he is likely to be remanded and his bail application will not be considered, unless a direction is given by this Court.

6. The application was opposed by the Public Prosecutor.

7. It is an admitted fact that the petitioner was the sole accused in C.C.No.288/2009 of the Judicial First Class Magistrate Court-II, Hosdurg and he was granted bail earlier and subsequently since he is absconding, the case was transferred to register of long pending cases and it is now pending as LPC.No.186/2011 of the Judicial First Class Magistrate Court-II, Hosdurg and non bailable warrant is pending against him. The apprehension of the petitioner that, if he surrenders before the court, he will be remanded to custody without any basis and this Court has in several matters of this nature observed that there is a duty cast on the presiding officer of the criminal court to consider and dispose of the bail application on the date of filing of the application itself as far as possible and so there is no necessity to issue any direction as such as claimed in the petition. However,

considering the apprehension raised in the petition, this Court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Judicial First Class Magistrate Court-II, Hosdurg in LPC.No.186/2011 (C.C.No.288/2009 in Crime No.46/2007 of Vellarikundu police station of Kasaragod district) pending before that court and moves for recalling the warrant and releasing him on bail, 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 as far as possible on the same day itself in accordance with law.

With the observations and directions, this petition is disposed of.

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

K. RAMAKRISHNAN, JUDGE.

cl

