

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Crl.MC.No. 2708 of 2015

*** LP 2/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PARAPPANANGADI**

CRIME NO. 488/2013 OF THIRURANGADI POLICE STATION, MALAPPURAM

*** THE NAME OF THE COURT "JUDICIAL FIRST CLASS MAGISTRATE, PARAPPANADI"
OCCURRING IN THE CRL.MC.2708/2015 IS CORRECTED AND SUBSTITUTED AS
"ASSISTANT SESSION JUDGE, TIRUR" AS PER ORDER DTD.22.5.2015 IN
CRL.MA.4813/2015 IN CRL.M.C.2708/2015.**

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PETITIONER(S)/ACCUSED/ACCUSED:

**RIYAS, AGED 31 YEARS,
S/O.ABOOBACKER, MUTTICHIRAKKAL, 12/362,
VEYATHAMKAVU HOUSE, C.H. ROAD, MUNNIYOOR (P.O.),
MALAPPURAM DISTRICT, PIN 676 311.**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
29-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 2708 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I:TRUE COPY OF THE FIRST INFORMATION REPORT DATED 08.06.2013.

ANNEXURE II:TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE PETITIONER.

ANNEXURE III:TRUE COPY OF THE VISA OF THE PETITIONER.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

Crl.M.C. No.2708 of 2015

Dated this the 29th day of May, 2015

ORDER

The petitioner herein is the accused in Crime No.488/2013 of Tirurangadi Police Station, alleging offences punishable under Sections 341, 324, 308 and 506 (1) of Indian Penal Code. It is averred that the petitioner has been working in Saudi Arabia for the past more than four years and that when the crime was registered he could not appear before the court below initially as he was abroad and consequently, the case was included in the long pending list as LP. No.2/2015 on the file of the Assistant Sessions Court, Tirur. The petitioner later appeared before the court below after his arrival from Saudi Arabia and he was enlarged on bail on 04/04/2015. While releasing the petitioner on bail his passport was taken into custody by the court below. Since the Visa of the petitioner is expiring on 18/06/2015, the petitioner has filed an application before the court below as per C.M.P.No.119/2015 in the above said L.P case No.2/2015 arising out of

S.C.No.604/2013 before the Assistant Sessions Court, Tirur. The court below as per Annexure IV order rendered on 07/04/2015 has rejected the plea of the petitioner for returning the passport. The rejection was on the ground that consequent to the summons issued to the petitioner, he had not appeared before the Assistant Sessions Court. That only after issuing non bailable warrant he had surrendered before the court. That in these circumstances the passport could not be released to him, etc.

2. Sri.R. Bindu Sasthamangalam, learned counsel for the petitioner submits that he could not come to India because of the restrictive conditions of his employment in Saudi Arabia. In these circumstances earlier he was released on bail and he had complied with all the conditions of the bail and it was only on issuance of summons by the Assistant Sessions Court that he could not appear, which led to the unfortunate incident of issuance of the non bailable warrant etc. The petitioner's Visa is expiring on 18/06/2015 and that direction may be issued for returning of passport and to enable him to travel abroad . It is further undertaken by the petitioner is that he would return back

to India within a period of three months from the date of release of the passport and that petitioner more interested in expeditious conduct of the trial thereafter.

3. Heard, learned counsel for the petitioner and the Public Prosecutor for the respondent. This court in Mohammed Rafeek v. Union of India reported in 2011 KHC 419 = 2011(3) KLT 117 as held in paragraph 12 thereof is reads as follows:

" 12. But the criminal courts have to take extreme care in imposing such condition. It cannot mechanically, and in every case where an accused has a passport impose a condition for its surrender. Law presumes an accused to be innocent till he is declared guilty. As a presumably innocent person he is entitled to all the fundamental rights guaranteed to him under the Constitution. At the same time, interest of the society has also to be protected. The court has to strike a balance between personal liberty of the accused guaranteed under Art.21 of the Constitution, investigation rights of the police and the interest of the society. The criminal court has to consider possibility of the accused if released on bail, fleeing justice and thereby thwarting the course of justice which affects the majesty of the law, as also the individual rights of the accused. The court, has to consider antecedents of the person accused or suspected of commission of the offence, nature of the offence he is said to be have committed, necessity for his presence for investigation, duration of investigation and such other relevant factors. The court has to decide whether notwithstanding the personal liberty of the accused, interest of justice required that his right of movement should be restricted during the pendency of the case by directing him to surrender his passport. If necessary, it

is open to the criminal court direct the accused to execute bond in case he has to do go abroad for any purpose, for appropriate amount with sureties undertaking to appear before the Investigating Officer or court as the case may be as and when required to do so. These are though not exhaustive, some of the matters to be borne in mind by the court while deciding whether there should be a condition to surrender the passport or when there is a request to release the passport already surrendered in court.”

4. Having regard to the facts and circumstances of the case it is to be appreciated that the petitioner is dependant on his employment in Saudi Arabia. Even during the pendency of crime and thereafter he had co-operated with the investigation. Going by the legal position settled by this Court in paragraph 12 of Mohammed Rafeek's case (supra), this Court is of the considered opinion that permission could be granted to the petitioner in the interest of justice to travel abroad and return back within a short time so as to face the trial. Accordingly the impugned order dated 07/04/2015 passed by the Assistant Sessions Court, Tirur in C.M.P. No.119/2015 is set aside. It is ordered that the passport of the petitioner shall be returned back to him on his filing affidavit before the Assistant Sessions Court, Tirur undertaking to return back to India and appear before the court below within three months from the date of

release of the passport subject to executing bond of requisite amount as may be imposed by the court below with two solvent sureties. It is also open to the court below to impose such other conditions as may be found necessary in the facts and circumstances of the case, taking into consideration aspects relating to the scheduling and conduct of the trial.

With these observations and directions the Crl.M.C. Stands finally disposed of.

Sd/-ALEXANDER THOMAS
JUDGE

MJL