

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.MC.No. 3582 of 2015

CRIME NO. 88/2008 OF CBCID, KOZHIKODE.
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PETITIONER/3RD ACCUSED:

**RADHA @ RADHAMANI @ RADHACHI,
W/O. JAYARAJAN, AGED 72 YEARS,
CHEMBAKASSERY VEETIL, MALUR KARA,
EANADHIMANGALAM VILLAGE,
PATHANAMTHITTA DISTRICT, NOW RESIDING AT
NO.3, MUTTICHIKKARAM APARTMENTS,
FASHION STREET, JUBILEE HOSPITAL MISSION P.O.,
TRICHUR-3.**

BY ADV. SRI.JOHN VARGHESE

RESPONDENTS/STATE AND COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, SIG II KOZHIKODE, CAMP AT POLICE CLUB,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE A1:** TRUE COPY OF THE ORDER DATED 16.9.2008 IN B.A.NO.5648/2008.
- ANNEXURE A2:** TRUE COPY OF THE ORDER DATED 31.10.2008 IN CRL.M.A.5813/2008.
- ANNEXURE A3:** TRUE COPY OF THE ORDER DATED 8.1.2009 IN CRL.M.A.7122/2008.
- ANNEXURE A4:** TRUE COPY OF THE ORDER DATED 23.1.2009 IN CMP 159/2009 OF THE JFCM COURT-I, ERNAKULAM.
- ANNEXURE A5:** TRUE COPY OF THE ORDER DATED 4.3.2009 IN CRL.M.C.770/2009.
- ANNEXURE A6:** TRUE COPY OF THE ORDER DATED 8.5.2009 IN SLP (CRL) 3085/2009 OF THE HON'BLE SUPREME COURT.
- ANNEXURE A7:** TRUE COPY OF THE ORDER DATED 30.7.2009 IN CRL. M.C.NO.1889/2009 OF THIS HON'BLE COURT.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3582 of 2015

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Dated this the 24th day of June, 2015

ORDER

The petitioner herein, who is a lady now aged 72 years, is accused No.3 in Crime No.88/2008 of CBCID/SIG.III. registered for offences under Secs.406, 465, 468, 471, 477, 120(B) read with Sec.34 of the I.P.C. According to the petitioner, the investigation is almost complete. That she has no relatives in Ernakulam. That her husband died on 17.10.2008 and her only daughter, one Dr.Rajasree, is now working as Plastic Surgeon in United Kingdom. The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure seeking invocation of this Court's inherent powers conferred as per that provision is for a direction to permit the petitioner to go abroad to visit her daughter in United Kingdom for a period of six months from the date of leaving India.

2. Earlier this Court as per Anx.A-1 order dated 16.9.2008 in Bail Application No.5648/2008 had granted bail to the petitioner,

wherein, inter alia, it was directed that the petitioner shall surrender her passport, if any, within seven days from the date of her release from custody before the Magistrate's Court and that she shall not leave Ernakulam district, except with the previous permission of the learned Magistrate. In paragraph 4 of Anx.A-1 order, the submission of the learned Public Prosecutor that the investigation regarding the involvement of the petitioner was already over, has been recorded by this Court. Later some modification was made to Anx.A-1 order as per Anx.A-2 order dated 31.10.2008. Subsequently, by Anx.A-3 order dated 8.1.2009, this Court had again modified Anx.A-1 bail order making it clear that condition Nos.ii and iii of Anx. A-1 order are lifted and further that if the petitioner seeks to return her passport, she is at liberty to make an application before the learned Magistrate, in which event, the learned Magistrate may pass appropriate orders regarding the release of the same on merits, etc. However, the prayer of the petitioner for release of the passport was rejected by the jurisdictional Magistrate as per Anx.A-4 order dated 23.1.2009. The petitioner challenged Anx.A-4 order before this Court by filing Crl.M.C.No.770/2009 and this Court as per Anx.A-5 order dated 4.3.2009 did not accord permission to go abroad, but

directed the investigation agency to complete the investigation with respect to the part played by the petitioner as expeditiously as possible, so that she can move the court for permission to go abroad after getting back her passport. Aggrieved by the denial of permission to travel abroad, the petitioner challenged Anx.A-5 order passed by this Court before the Apex Court by filing SLP (Crl.) No.3085/2009, in which matter, the Apex Court passed Anx. A-6 order dated 8.5.2009. It was ordered in Anx.A-6 order by the Apex Court that having regard to the observations made by this Court in Anx.A-1 bail order dated 16.9.2008 that the investigation has been completed as pertaining to the petitioner, she will be entitled to apply to the High Court for return of the passport and permission to go abroad. Accordingly, in compliance with the directions by the Apex Court in Anx. A-6 order dated 8.5.2009, the petitioner preferred Crl.M.C.No.1889/2009 before this Court. This Court as per Anx.A-7 order rendered on 30.7.2009 in Crl.M.C.No. 1889/1009 noted that the petitioner's daughter was then at Brunei and she has to visit her daughter, for which purpose she sought release of her passport. This Court also noted the submission on behalf of the petitioner that she is fully prepared to co-operate with

the investigation and will return to India within six months and if necessary, she will return earlier for the purpose the investigation and in such circumstances, the passport be released, etc. This Court noted the submission of the learned Prosecutor that A-5 therein is yet to be apprehended and the report from the Forensic Science Laboratory is yet to be received and therefore, for further investigation, interrogation of the petitioner may be necessary and if the passport is released, the petitioner may not be available for further interrogation and will not be available for trial and in such circumstances, the passport cannot be released.

3. This Court has noted in Anx.A-7 that the petitioner was granted bail as early as on 16.9.2008 and even the other conditions in the bail order were subsequently modified and this Court held that merely on the ground of questioning the petitioner, her passport need not be retained and that if apprehension is that the petitioner will not be available for interrogation or trial, sufficient conditions could be imposed. Accordingly, this Court as per Anx.A-7 order dated 30.7.2009 allowed the prayer in Crl.M.C.No. 1889/2009 and accordingly, quashed the impugned rejection order of the learned Magistrate, who was directed to release the passport

to the petitioner on filing undertaking before the court to the effect that she is prepared to appear before the investigating officer as and when necessary and also undertaking that she will appear before the court below at the time of trial and the petitioner was directed to return to India within six months from the date of leaving, after getting her passport.

4. As earlier stated, the present prayer of the petitioner that she wants to visit her only daughter, Dr.Rajasree, who is now working as a Plastic Surgeon in the United Kingdom and she wants permission to travel abroad to be with her daughter for at least six months as she is now aged 72 and her husband has died as early as on 17.10.2008.

5. The respondents have filed statement dated 23.6.2015 through the Public Prosecutor. Apart from stating the factual allegations involved in the crime, it is stated in para 3 of the said statement that the case is still under investigation and that only a draft charge has been prepared and forwarded to higher ups and that draft charge may return with specific instruction to comply before submitting the final charge and during that time, the attendance of the petitioner may be required. It is stated in

paragraph 4 of the statement that the petitioner may stay permanently at U.K. and if she lives with her daughter permanently, it will affect the successful prosecution of the case and that it is a long procedure to bring back the petitioner to India to produce before the court below for trial proceedings, etc.

6. Heard Sri.John Varghese, learned counsel appearing of the petitioner and the learned Public Prosecutor appearing for the respondents.

7. Due to similar pleas of opposition made by the prosecution as one projected now in the present statement dated 23.6.2015 filed by them, learned Magistrate as well as this Court had declined to grant permission to the petitioner to go abroad to meet her daughter as evident from Anx. A-4 order passed by the learned Magistrate and Anx.A-5 order passed by this Court. The Hon'ble Supreme Court as per Anx.A-6 order had pointedly found that as the investigation as it relates to the petitioner has been completed, the petitioner will be entitled to apply to this Court for return of her passport and for permission to go abroad. Thereafter, this Court reconsidered the entire matter raised in Cr1.M.C.No.1889/2009 and passed Anx.A-7 order holding that an

objection of the prosecution, which is similar to the present one raised is not tenable and this Court specifically found in paragraph 5 of Anx.A-7 order that merely on the ground of questioning the petitioner, her passport need not be retained and that if the apprehension is that the petitioner will not be available for interrogation or trial, sufficient conditions could be imposed. Accordingly, this Court in Anx.A-7 order quashed the impugned rejection order passed by the learned Magistrate and directed the court below to release the passport to the petitioner on her filing undertaking before the court to the effect that she is prepared to appear before the investigating officer as and when necessary with sufficient notice and also undertaking that she will appear before the court at the time of trial and that the petitioner will return to India within six months from the date of leaving, after getting the passport.

8. It is to be noted that the respondent investigation agency has no allegation that the petitioner has in any way attempted to scuttle the investigation or she has not co-operated with the investigation or that she has attempted to influence any witnesses or the course of the investigation in any manner. The investigation

agency has no case that the petitioner had previously attempted to take undue advantage of the permission granted by this Court in Anx. A-7 or that she has not returned back. On the other hand, it is indisputable case that after granting permission in terms of Anx.A-7 order the petitioner has come back to India. The petitioner is 72 year old lady, whose husband has died as early as on 17.10.2008. The indisputable fact is that the petitioner has only her daughter, who is now working as Plastic Surgeon in the United Kingdom.

9. The beneficial orders passed by the Supreme Court and by this Court have not in any way be abused or misused by the petitioner. She has indeed come back and there is no case for the investigation agency that there has been any violation of any of the conditions imposed by this Court in Anx.A-7 order. It has been made clear by the investigation agency before this Court, as evident from Anx.A-1 order passed as early as on 16.9.2008, that the investigation regarding the involvement of the petitioner is already over. Even if some other formalities are to be done as suggested in para 3 of the statement dated 23.6.2015 of the investigation agency, that need not stand in the way of consideration of the

petitioner's request for permission to travel abroad. This Court is fully reinforced and justified in taking this view especially in the light of the specific finding in paragraph 5 of Anx.A-7 order passed by this Court that this Court had previously found that the passport of the petitioner need not be retained indefinitely merely on the ground of the requirement of the investigation agency to question the petitioner later. The crime was registered as early as in the year 2008. The reason for the non-completion of the investigation at this long distance of time is not in any way clearly or cogently stated in the statement of the I.O..

10. The Supreme Court has also taken judicial cognizance in Anx.A-6 order of the fact that the investigation as far as the petitioner has been completed and that she is entitled to apply to this Court for return of her passport for permission to go abroad, as can be seen from Anx.A-6 order. This Court has clearly delineated the well settled legal principles that are to be applied while considering the request of an accused for permission to travel abroad in rulings of this Court as in Ashok Kumar v. State of Kerala reported in 2009 (2) KLT 712, Muhammed v. State of Kerala reported in 2012 (4) KLT 655, etc. In the case, Anwar.P.K. v. State

of Kerala, reported in LAWS (Ker) 2014-7-118 (Crl.M.C.Nos.3854 and 3855 of 2012), this Court has held that in appropriate cases courts can permit accused persons to travel abroad for a limited or even longer periods and in that case this Court had directed the petitioner therein, who was granted permission to travel abroad, to execute necessary bonds for such amounts as may be specified by the court below with two sureties undertaking to appear before the court below at the time of trial in the above said case, etc.

11. In the light of these aspects this Court is of the view that the prayer of the petitioner for permission to travel abroad for a limited period could be considered. Accordingly, in tune with the directives issued by the Supreme Court in Anx.A-6 order and by the findings made by this Court in Anx. A-7 order as well as the legal principles laid down by this Court in the aforestated reported rulings, it is ordered in the interest of justice that the jurisdictional Magistrate court concerned shall release the passport of the petitioner on her filing an affidavit of undertaking before the said court to the effect that she is prepared to appear before the investigating officer as and when necessary with sufficient due notice and also undertaking that she will appear before the court

below at the time of trial and that she will return to India within six months from the date of leaving after the passport is released to her. In the said affidavit the petitioner shall also disclose about her mobile cellular number, if any, and her e-mail id., in which she could be contacted during her stay in the U.K. and she shall also disclose in the said affidavit the mobile cellular numbers, land telephone numbers, e-mail I.d. and full address of her daughter in U.K and also as to the exact address in which the petitioner would be staying during this period. The petitioner shall execute necessary bond for Rs. 50,000/- with two solvent sureties (who could either be the same sureties as offered at the time of taking bail or fresh sureties) undertaking to appear before the court below at the time of trial in the above said case.

With these observations and directions, this Crl.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge