

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.MC.No. 4324 of 2015 ()

**CMP 1285/2015 IN CRIME NO. 10/2015 OF MANGALAPURAM POLICE STATION,
THIRUVANANTHAPURAM DISTRICT.**
.....

PETITIONER/PETITIONER:

**SHEMEER, AGED 23 YEARS, S/O.RAFEEQ,
KUZHIYALACKAL PUTHUVAL PUTHEN VEEDU,
NEAR CRPF CAMP, PALLIPPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.P.ANOOP (MULAVANA)

RESPONDENT/STATE:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH.R

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE A1- TRUE COPY OF THE ORDER IN CRL.MC 199/2015
DATED 09.02.2015 OF THE SESSIONS COURT,
THIRUVANANTHAPURAM.**
- ANNEXURE A2- TRUE COPY OF THE ORDER OF THE JFCM-II, ATTINGAL
DATED 09.06.2015 IN CMP 1285/2015 IN CRIME NO.10/2015 OF
THE MANGALAPURAM POLICE STATION.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Dated this the 13th day of July, 2015.

ORDER

The order under challenge is one at Anx-A2 dated 9.6.2015 rendered in C.M.P.No.1285/2015 in Crime No.10/2015 of Mangalapuram Police Station, whereby the prayer of the petitioner for a direction to the Regional Passport Officer to issue passport to him has been rejected. The petitioner is an accused in the impugned crime for offences punishable under Secs.143, 147 r/w 149 IPC and Secs.3 & 5 of the Explosive Substances Act. The court below has rejected the plea of the petitioner on the ground that the Sessions Court as per Anx-A1 order while granting bail has already directed him to appear before the Investigating Officer on all Mondays and Saturdays till the final charge is filed, etc., and that allowing the application of the petitioner will amount to violation of the impugned condition ordered while granting bail to the petitioner by the Sessions Court. Moreover, the court below held that after the submission of the final report/charge sheet under the normal circumstances the case will have to be committed to the Sessions Court and therefore allowing the application would cause difficulty in the committal proceedings as well.

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2. Heard Sri.P.Anoop, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

3. On a perusal of Anx-A2 order it can be seen that the same has been passed without adverting to legal principles laid down by the decision of this Court in S.K.Asok Kumar v. State of Kerala reported in 2009 KHC 557 wherein this Court held that in normal course the calendar cases are not likely to come up for trial at least for a period of 9 or 10 months and hence, there was no justification on the part of the Magistrate in refusing the permission sought for to go abroad for a period of six months, etc. This Court in Asok Kumar's case (supra) has considered the provisions contained in the Passport Act and thus came to such considered conclusion. The legal principles in this regard has also been laid down by this Court in Muhammed v. State of Kerala reported in 2012 (4) KLT 655 and Mohammed Rafeek v. Union of India reported in 2011(3) KLT 117. Merely because the Sessions Court has imposed a condition that the petitioner shall appear before the Investigating Officer on a fixed date till the submission of the final report/charge sheet and merely because of the case in question is exclusively triable by the Sessions Court, will not itself be a ground for

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rejecting the permission for issuance of passport and the consequent prayer for permission to travel abroad, etc. Accordingly, the impugned Anx-A2 order rejection order is set aside. It is ordered in the interest of justice that the petitioner will be at liberty to make requisite application for grant of passport before the competent passport officer concerned in which case the said officer shall consider the application in accordance with the guidelines and norms notwithstanding the pendency of the criminal case and take an appropriate decision on the request of the petitioner for issuance of the passport. In case the passport officer concerned issues passport to the petitioner, then the passport officer will be at liberty to retain the original of such passport of the petitioner in safe custody of the office but the passport officer shall sent attested photocopy of that passport to the petitioner by registered speed post. As and when passport is issued, in case the petitioner is able to establish that he has a bonafide genuine need for traveling abroad by producing necessary materials in that regard especially for the purpose of employment, etc., then it will be open to him to make appropriate application to the court below for necessary permission to travel abroad. In that event, the court below, after granting reasonable opportunity to the petitioner through his counsel, if any, and the Investigating Officer,

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through the Public Prosecutor concerned, shall take a decision thereon in accordance with law on merits and in the light of the legal principles laid by this Court in the cases S.K.Asok Kumar v. State of Kerala reported in 2009 KHC 557, Muhammed v. State of Kerala reported in 2012 (4) KLT 655 and Mohammed Rafeek v. Union of India reported in 2011(3) KLT 117 and any other rulings in that regard. Such decision shall be taken by the court below as early as possible within two weeks from the date of filing of such application before the court below.

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

ALEXANDER THOMAS,
Judge.

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