

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.MC.No. 4489 of 2015

**ORDER DATED 15-06-2015 IN CMP.NO.1138/2015 IN SC 242/2015 OF ADDITIONAL SUB
COURT, THALASSERY
CRIME NO. 163/2009 OF KOLAVALLUR POLICE STATION, KANNUR**
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PETITIONER(S)/ACCUSED NO.1:

**ASSES, AGED 26 YEARS,
S/O.SOOPPI, RESIDING AT CHALUPARAMBATH HOUSE,
KOLAVALLUR AMSOM, THUVAKUNNU.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENT(S)/COMPLAINANT/STATE:

**STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031
(CRIME NO.163/2009 OF KOLAVALLUR POLICE STATION,
KANNUR DISTRICT)**

BY PUBLIC PROSECUTOR SRI.GITHESH R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
28-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 4489 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE I: CERTIFIED COPY OF THE ORDER DATED 15/6/2015 IN CMP NO.1138/15
IN SC NO.242/15.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C.No.4489 of 2015

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Dated this the 28th day of July, 2015

O R D E R

The order under challenge is one at Anx.I dated 15.6.2015 rendered by the Additional Assistant Sessions Judge, Thalassery on Crl.M.P.No.1138/2015 in Sessions Case, S.C.No.242/2015 (arising out of Crime No.163/2009 of Kolavallur Police Station, Kannur district), whereby the prayer of the petitioner to release the passport to him, has been rejected by the court below. The court below held in the impugned order that if the prayer is allowed, then the petitioner is likely to abscond and further that the case against the 2nd accused in the final report is still remains to be committed to the Sessions Court, etc.

2. Heard Sri.S.Rajeev, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. It is pointed out that the petitioner is employed in the Gulf country and that if he does not reach the said foreign country

within six months from his return from the Gulf, he will lose his visa, etc. It is also pointed out that the petitioner had earlier appeared before the court below as per the conditions imposed in the bail order and he had surrendered his passport before the jurisdictional Magistrate's court concerned and that later the case was committed to the Sessions Court concerned, which is now pending as S.C.No. 242/2015 on the file of the Additional Assistant Sessions Judge, Thalassery and that he had approached the said Sessions Court for releasing the post, which he had already surrendered as per the direction of the jurisdictional Magistrate and that it is this prayer that has been rejected as per the impugned Anx.I order. It is also pointed out that the State Government has decided to withdraw the case against the other accused, which is pending as S.C.No.182/2013 on the file of the Additional Assistant Sessions Court, Thalassery, corresponding to Crime No.108/2012 of Kolavallur Police Station and that there is every possibility that the case against him would also be withdrawn, etc. It is pointed out that while the petitioner was on bail, he secured a job in the Gulf country and that therefore he could not appear before the court below and when he appeared before the court below as per the conditions

imposed in the bail order, he had surrendered his passport before the court below, etc.

4. On a consideration of the averments and materials on record available in this case, this Court is of the considered opinion that the impugned rejection order is not in consonance with the well settled legal principles laid down by this Court in cases as in Asok Kumar v. State of Kerala reported in 2009 (2) KLT 712, Mohammed Rafeek v. Union of India reported in 2011(3) KLT 117 and Muhammed v. State of Kerala reported in 2012(4) KLT 655. In this view of the matter, the impugned order is set aside and it is ordered that the passport surrendered by the petitioner will be released to him to enable him to travel abroad and come back to India within a limited period of six months. To effectuate this, the petitioner will file an affidavit before the Additional Assistant Sessions Judge, Thalassery, unconditionally undertaking that he would return back to India within six months from the date of his departure to the foreign country and further that an attested copy of his visa should also be produced before the court below and his address in the foreign country concerned along with his e-mail I.D., mobile number and landline phone number, if any, where he is

contactable in the foreign country, etc. should also be furnished in the affidavit and a copy of the said affidavit shall also be served on the Public Prosecutor concerned. The petitioner will deposit a cash amount of Rs.50,000/- (rupees fifty thousand only) before the Additional Assistant Sessions Judge, Thalassery, and the said amount will be refunded to him on his return back to the country, as directed above.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge