

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.MC.No. 4600 of 2015 ()

CRL.MP. NO.403/2015 IN CRL.MC. NO.1250/2010 OF SESSIONS COURT, MANJERI.

.....

PETITIONER/PETITIONER:

**P.K. RAHMATHULLA, S/O KUNHIPOCKER,
PALAKULATHIL HOUSE, VAZHAKKAD,
ERNAD TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR.

RESPONDENTS/STATE & COMPLAINANT:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
VAZHAKKAD POLICE STATION,
MALAPPURAM DISTRICT, PIN-673 640.**

BY PUBLIC PROSECUTOR SRI.GITHESH. R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE A: TRUE COPY OF THE ORDER DATED 04/12/2010 IN
CRL.MC NO. 125/2010 OF THE COURT OF SESSIONS,
MANJERI.**

**ANNEXURE B: TRUE COPY OF THE ORDER DATED 30/03/2015 IN
CRL.MC NO. 403/2015 IN CRMC NO. 1250/2010 OF THE
COURT OF SESSIONS, MANJERI.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4600 of 2015

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Dated this the 27th day of July, 2015

O R D E R

The order under challenge in this Crl.M.C. is Anx.B order passed in Crl.M.P.No.403/2015 in Crl.M.C.No.1250/2010 (arising out of Crime No. 248/2010 of Vazhakkad Police Station). The said impugned order was passed by the Sessions Judge, Manjeri, wherein the petitioner herein sought lifting of the impugned condition No.6 of Anx.A bail order, whereby the petitioner was directed to surrender his passport for availing the benefit of the bail. The court below as per the impugned Anx.B order, disposed of the said application with the direction that the trial court (Judicial First Class Magistrate's Court, Malappuram) can consider the said request for release of the passport and pass appropriate orders. It is this order that is under challenge before this Court in this Crl.M.C.

2. Heard Sri.Babu.S.Nair & Smt.Smitha Babu, learned Advocates appearing for the petitioner and the learned Public Prosecutor appearing the respondent State of Kerala.

3. The impugned condition No.6 of Anx.A order reads as

follows:

- “6. The petitioners shall surrender their Passports before the Judicial First Class Magistrate's Court, Malappuram. If they have no Passports, they shall file affidavits to that effect before that court.”

4. Smt.Smitha Babu, learned counsel of the petitioner submits that the apprehension of the petitioner is that since the impugned condition No.6 is one insisted by the Sessions Court for as part of the bail conditions, the learned Magistrate may construe that he may not be competent to grant the main prayer for release of passport, as condition No.6 in Anx.A was passed by the Sessions Court.

5. The matter in issue is fully covered by the legal principles laid down by this Court in the case, Asok Kumar v. State of Kerala reported in 2009 (2) KLT 712. Paragraphs 3 and 4 of the above said decision read as follows:

'3. It is alleged that the petitioner is an advocate by profession and having 29 years of practice as a lawyer and that the aforesaid crimes came to be registered against him due to political animosity. As per C.M.P. Nos.1140 and 1141 of 2009 in C.C.Nos. 236 and 225 of 2008 respectively, the petitioner moved the Magistrate under S.22(a) of the Passports Act, 1967 seeking permission to travel outside India for a period of six months. According to the petitioner, he has been chosen to appear for the Interpol India to defend a case.

The permission was sought in accordance with notification No.G.S.R. 570(E) dated 25.8.1993 (published in the Gazette of India, Extra. Part II S.3(i) dated 25.8.1993) issued by the Central Government under cl.(a) of S. 22 of the Passports Act, 1967. As per the said notification it is only if the criminal Court before which the

case of the applicant is pending permits him to depart from India, will the applicant be exempted from the operation of the provisions of cl. (f) of subs.(2) of S.6 of the said Act and the same shall be, subject to conditions such as the period specified by the Court for the issue of Passport etc.

The said notification reads as follows:-

"In exercise of the powers conferred by cl.(a) of S.22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of cl.(f) of sub-s. (2) of S.6 of the said Act, subject to the following conditions, namely:-

- (a) the passport to be issued to every such citizen shall be issued-
 - (i) for the period specified in order of the court referred to above, if the court specified a period for which the passport has to be issued; or
 - (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;
 - (iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or
 - (iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.
- (b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

- (c) any passport issued in terms of a(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad.
- (d) the said citizen shall give an undertaking in writing to the passport-issuing authority that he shall if required by the court concerned appear before at any time during the continuance in force of the passport so issued."

S.6(2)(f) of the Passports Act, 1967 reads as follows:-

"6(2). Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under cl.(c) of sub-s.(2) of S.5 on any one or more of the following grounds, and on no other ground, namely:-

- (a)
- (b)
- (c)
- (d)
- (e).....;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g)
- (h)"

4. In the normal course the above C.C. cases are not likely to come up for trial at least for a period of 9 or 10 months. 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.'

6. Accordingly, it is ordered that it will be open to the court below concerned to consider the plea of the petitioner for release of the passport on merits and take an appropriate decision thereon after hearing the petitioner and the prosecution agency. The decision as directed above shall be taken within a period of two weeks from the

date of receipt of a certified copy of this order, in accordance with the legal principles laid down by this Court 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 etc., or any other appropriate rulings in that aspect of the matter.

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

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge