IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Crl.MC.No. 4760 of 2015

CC 1052/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PIRAVOM

PETITIONER(S)/ACCUSED NO.1:

JAYAN P. PAVOO, AGED 43 YEARS,
S/O. PAVOO, PUTHUPALLILL HOUSE,
MARITHAYAM P.O., KANJIRAMATTOM, ERNAKULAM DISTRICT.

BY ADV. SRI.S.DILEEP (KALLAR)

RESPONDENT(S):

STATE OF KERALA,
REPRESENTED THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.,
COCHIN - 31.

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

Crl.MC.No. 4760 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1 : THE TRUE COPY OF THE COMPLAINANT IN CC 1052/14 OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, PIRAVOM.

ANNEXURE 2 : THE TRUE COPY OF THE PLAINT IN OS 237/12 IN THE FILE OF HON'BLE MUNSIFF COURT, ERNAKULAM.

ANNEXURE 3 : THE TRUE COPY OF THE PLAINT IN OS 683/12 IN THE FILE OF HON'BLE MUNSIFF COURT, ERNAKULAM.

ANNEXURE 4 : THE TRUE COPY OF THE PLAINT IN OS 815/12 IN THE FILE OF HON'BLE FAMILY COURT, ERNAKULAM.

ANNEXURE 5 : THE TRUE COPY OF THE PLAINT IN OS 554/15 IN THE FILE OF HON'BLE MUNSIFF COURT, ERNAKULAM.

ANNEXURE 6 : THE TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT BEARING NO.L 4560930 SHOWING THE EMIGRATION SEAL FOR ARRIVAL AND DEPARTURE OF THE PETITIONER.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C.No.4760 of 2015

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Dated this the 11th day of August, 2015

O R D E R

The petitioner is accused No.1 in C.C No.1052/14 on the file of the Judicial First Class Magistrate Court, Piravom which is instituted on the basis of a private complaint submitted by the petitioner's brother u/s 190, 200 and 156(3) of the Cr.P.C for the offences u/s 120(b), 420, 468, 471 r/w 34 of IPC. The petitioner, his father, sister and the Bank Manager, State Bank of Travancore (SBT), Mulanthuruthy are arrayed as the other accused in the aforestated C.C.

2. It is contended by the petitioner that the very subject matter of the impugned complaint is purely civil in nature and four civil cases are pending before the Munsiff Court, Ernakulam between the parties who are all the members of the same family as is evident from Anxs.A2 to A5. It is pointed out that though the petitioner is in U.K since the year 2006 his previous visit to India was on 1/1/2014 and at that time he had departed from India on

16/1/2014 and thereafter he has come back to India for the first time only on 23/7/2015. It is stated that, these aspects are all evident from the entries in the original passport as per Anx-6. Later, the petitioner came to know that the cognizance in the above impugned Calendar Case was taken on 20/10/2014 and summons was ordered to be issued to the accused on the same day by the Judicial First Class Magistrate's Court, Piravam and thereafter the case was posted on 10/12/2014 and 8/1/2015. Though the first posting date, for appearance was on 10/12/2014, the petitioner was unaware of the said posting as the summons was not served on him as he was then in U.K. This resulted in issuance of the non bailable warrant against him. The prayer of the petitioner is that now he has come back to India only on 23/7/2015 and that necessary directions may be given by this Court to ensure that on his appearance before the learned Magistrate dealing with the aforestated complaint, his bail application and other applications for recall of warrant should be considered on the same day and that necessary direction may be given to grant him bail subject to any reasonable and fair condition that may be imposed by the Court.

3. Heard Sri.Dileep S.Kallar, learned counsel for the petitioner

and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. When the matter came for consideration on 28/07/2015, this Court directed the Registry to get a report from the Judicial First Class Magistrate Court, Piravom, as to when cognizance was taken in C.C.No.1052/2014 and when summons was issued to the petitioner (A1) and the details of the issuance of the non-bailable warrant and the proclamation proceedings, etc. against the petitioner. It was also then ordered therein that all further coercive steps that may be pending against the petitioner in pursuance of the impugned warrant issued against him will remain under suspension. This Court had also requested the petitioner's counsel to make available the original of the passport on the next hearing date for this Court's perusal.

5. As directed by this Court, the JFMC, Piravom submitted a report dated 05/08/2015 to the Registry of this Court wherein it is stated that cognizance was taken on 20/10/2014 and summons was ordered to be issued to the accused on the same day. Thereafter two postings were given on 10/12/2014 and 08/01/2015. On 24/01/2015 when the case was taken up,

vakalath was filed for A4 and memo of appearance were filed for A2 and A3 and on the same day (24/01/2015) and NBW (non bailable warrant) was ordered against A1. Later non bailable warrant was repeated against A1 and since NBW was returned un-executed, the same was repeated and steps u/s 82, 83 Cr.P.C were also ordered against A1 on 30/06/2015 and the case now stands posted to 26/08/2015 etc.

6. The learned counsel for the petitioner has made available the original of the petitioner's passport and the learned Public Prosecutor was requested to verify the details of the endorsement therein. On a perusal of the passport it is found that petitioner had arrived in India on 01/01/2014 and departed from India on 16/01/2014 and thereafter he has come back to India for the first time only on 23/07/2015. Further it is evident that the petitioner has remained outside India for the period from 17/01/2014 up to 22/07/2015. The summons in this case issued by the court below on 20/10/2014 and the first three postings were on 10/12/2014, 08/01/2015 and 24/01/2015 and NBW was ordered against the petitioner (A1) on 24/01/2015. Therefore, at the time of issuance of the summons and at the time of issuance of the

impugned non bailable warrant, the petitioner was indisputably not in India. Having regard to the fact that the impugned proceeding mainly arise due to disputes between the petitioner and his brother, it is ordered in the interest of justice that in the event of the petitioner appearing before the Judicial First Class Magistrate Court, Piravom without any further delay and submitting necessary application for grant of bail, then the learned Magistrate shall consider the same on the same day and grant him bail after imposing conditions which are necessary just and fair in the facts and circumstances of case. Consequently, the impugned non bailable warrant shall then stand recalled and all further consequential proceedings arising out of the issuance of that non bailable warrant will also stand recalled. The petitioner will ensure that an advance copy of the bail application shall be served on the prosecutor concerned attached to the court below at least 24 hours prior to the proposed appearance. Until orders are passed on the bail application as directed above, all further coercive proceedings in pursuance of the impugned warrant and other consequential proceedings will remain under suspension. In case the petitioner does not appear before the learned Magistrate within a time limit of

three weeks from today, then the benefit of the direction given herein above this order shall stand automatically vacated without any further orders from this Court.

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

Sd/- ALEXANDER THOMAS, JUDGE

sab/MJL