

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 5598 of 2015 ()

CC 210/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, MUVATTUPUZHA

PETITIONER/2ND ACCUSED :

**DOMINIC,
S/O.LUKOSE, KUNNAPPILLIL HOUSE,
MANIYAMTHARAM BHAGOM, KALLOORKKAD.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKKUZHY**

RESPONDENT/STATE :

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

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 5598 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE A - A TRUE COPY OF THE COMPROMISE DATED 30.9.2011.

ANNEXURE B - A TRUE COPY OF THE B-DIARY.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

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Crl.M.C.No.5598 of 2015
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Dated this the 20th day of August , 2015

ORDER

The above captioned Crl.M.C. has been filed under Sec.482 of the Code of Criminal Procedure with the following prayers:

- “i) Direct the Judicial First Class Magistrate's Court, muvattupuzha to grant bail to the petitioner in case he surrenders before the Magistrate's Court, proceeding in C.C.No.210/2011.
- ii) Issue such other orders as are just and necessary in the facts and circumstances of the case.”

2. Heard Sri.Mathew John, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent– State of Kerala.

3. It has been held by this Court in the case Oseela Abdul Khaker V.State of Kerala reported in 2012 (4) KLT 535 that where the offences are bailable, the accused if he offers to give bail has to be released pending his trial, then there is no question of the Police Officer or Court exercising any discretion in granting bail and the only choice is of demanding the security with surety and an exemption thereto can be made against the accused proceeded of bailable offence, only in a situation covered by Sub Sec.(2) of Sec.439 of the Code and that the mere fact the Magistrate has issued a non–bailable warrant against such accused and proceeded

with coercive steps under Secs. 82 and 83 of the Code against such accused, is no ground to refuse bail when the offence is bailable. Accordingly, it is pointed out by the learned counsel for the petitioner, that the offences involved in the present Calendar Case, C.C.No.210/2011 on the file of the Judicial First Class Magistrate Court, Muvattupuzha are those under Secs.451, 341, 323 r/w 34 of the IPC, which are all bailable offences. In the above circumstances, it is for the learned Magistrate to consider the application for bail and grant him bail in the light of the legal principles laid down by this Court in Oseela Abdul Khaker's case (supra) but after imposition of conditions which are just, fair and necessary in the facts circumstances of the case.

5. Having regard to the totality of the facts and circumstances of this case, it is ordered in the interest of justice that in case the petitioner voluntarily surrenders before the Judicial First Class Magistrate's Court, (dealing with C.C.No.210/2011), within four weeks from today, and submits necessary application for recall of the warrant and application for grant of bail, then the court below concerned shall consider those applications on the same day itself, in accordance with law and taking into consideration the facts and circumstances of this case and grant

bail, as directed above. It is further ordered that the petitioner shall give advance notice to the Prosecutor concerned attached to the court below concerned intimating the date and time of surrender before the court below, at least 24 hours prior to such proposed surrender. It is further ordered in the interest of justice that until orders are passed by the court below concerned as directed above, further coercive steps against the petitioner may be kept in abeyance for the time being. It is made clear that in case the petitioner does not surrender before the court below concerned within a period of four weeks as directed above, then the directions issued herein above shall automatically stand vacated.

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

Sd/-

ALEXANDER THOMAS, JUDGE

AVS