

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.MC.No. 6034 of 2015 ()

CC.NO. 1618/2013 OF CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

PETITIONER/ACCUSED 1 :

P.C. RAHOOPH
S/O.ABOOBACKER, AGED 51 YEARS
KARUVATTOR AMSOM, PARAMBIL EAST
P.O. PARAMBIL, KOZHIKODE DISTRICT.

BY ADV. SRI.E.NARAYANAN

RESPONDENT/STATE :

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM
(STATION HOUSE OFFICERS, MATTANNUR, MALOOR
IRIKKUR, ULIKKAL, PERAVOOR
IRITTY, KARIKKOTTAKARI AND AARALAM POLICE STATION)

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Mn

...2/-

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1 - TRUE COPY OF THE COMMON ORDER DATED 16.06.15 IN CC NO.1618/13 AND THE 36 OTHER CASES ON THE FILE OF THE CHIEF JUDICIAL FIRST CLASS MAGISTRATE COURT, THALASSERY.**
- ANNEXURE A2 - TRUE COPY OF THE ORDER DATED 03.07.15 IN CMP NO.3221/15 IN CC NO.1618/13 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY.**
- ANNEXURE A3 - TRUE COPY OF THE CMP 3861/15 IN CC NO.1618/13 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY.**
- ANNEXURE A4 - CERTIFIED COPY OF THE ORDER DATED 26.08.15 IN CMP 3861/15 IN CC NO.1618/13 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K.RAMAKRISHNAN, J.

=====

Crl. M.C. No.6034 OF 2015

=====

Dated this the 22nd day of September, 2015

ORDER

This is an application filed by the 1st accused in C.C.No.1618/2013 on the file of Chief Judicial Magistrate's Court, Thalassery challenging Annexure 4 order passed by the learned Magistrate under Sections 482 of the Code of Criminal Procedure (hereinafter referred to as the Code).

2. It is alleged in the petition that the petitioner was arrayed as 1st accused in Crime No.385/2012 of Mattannur Police Station alleging offences under Sections 406, 406, 120(B) read with Section 34 of the Code and Section 3 and 4 of Price Chits and Money (Banning) Scheme Act. After investigation, final report was filed and it was taken on file as C.C.1618/2013 on the file of the Chief Judicial Magistrate Court, Thalassery. The petitioner was accused in several cases of similar nature pending before the same court and as per Annexure A1 common order, he was granted bail on all these cases including this case on

conditions inter alia that he shall surrender the passport and shall not leave India without prior permission from the court. Since he was having business transactions abroad also, he filed Crl.MP 3221/2015 in CC 1618/2013 for permission to go abroad for 30 days and also wanted to return the passport for that purpose and that application was allowed as per Annexure 2 order and he was directed to resubmit his passport on or before 10.8.2015 and that was complied with. Since he wanted to go abroad again in connection with his employment and business, he filed Annexure 3 petition for return of passport within 6 months. But that petition was dismissed by the court below by Annexure A4 order which is being challenged by the petitioner by filing this petition.

3. Heard the Counsel for the petitioner Sri. E.Narayanan and Smt. Serena George learned Public Prosecutor appearing for the State.

4. The counsel for the petitioner submitted that on earlier occasion, similar petition was filed and the court below had allowed the prayer and he went abroad and came

back and surrendered the passport. Since in his absence business abroad could not be properly conducted he want to go abroad again and wanted to be there for sometime for that purpose of regularising his business there. If the passport is not returned for the period mentioned, he will be put to serious hardship.

5. On the other hand the learned Public Prosecutor submitted on the basis of the report submitted by the Station House Officer that he has involved in several cases and according to the prosecution an amount of more than 3 crores was obtained from several persons and with that money, he started his business abroad. If he is allowed to go abroad he is likely to abscond and this fact was denied by the counsel for the petitioner.

6. It is an admitted that that the petitioner was arrayed as 1st accused in Crime No.385/2012 of Mattannur Police Station along with others alleging offences under Section 406,420 and 120(B) read with Section 34 of the Code and Section 3 and 4 of Price Chits and Money (Banning) Scheme Act and after investigation final report

was filed and it was taken on file as CC 1618/2013 pending before the Chief Judicial Magistrate's Court, Thalassery. It is also an admitted fact that the petitioner was the accused in similar cases which are also pending before the same court after completion of the investigation. It is also in a way admitted that he was arrested the accused as per Annexure A1 common order, bail was granted to him on conditions inter alia to surrender his passport and not to leave India without prior permission from the court and accordingly he had surrendered the passport as well. It is also seen from the documents produced by the petitioner that he had earlier filed Crl.MP 3221/2015 for permission to go abroad and release the passport for a period of 30 days and inspite of the same objection raised by the Deputy Director of Prosecution, the learned Magistrate allowed the application as per Annexure A2 order and he was directed to surrender his passport on or before 10.8.2015 and accordingly he had complied with that condition and surrendered the passport.

7. Since he is having business transaction in Gulf countries, his presence is required for proper conduct of the

business, he wanted to go abroad again. So he filed the present petition as Annexure-3 seeking permission to go abroad for 180 days and also to release the passport for that purpose. But that petition was dismissed by the court below by the employment order which is being challenged by the petitioner.

8. Considering all these objections now raised, the court below had earlier by Annexure A2 order allowed the application and released the passport for a particular period. So the court below was not justified in rejecting the applications on the same set of objections raised by the Deputy Director of Prosecution. Merely because the petitioner is the accused in several cases, that alone is not ground for denying permission to go abroad if his professional activities are likely to be impaired on account of his absence. If the court feels that such a longer period cannot be granted, Court below should have restricted the period and permitted the petitioner to go abroad on certain conditions. In this case also trial has not started so far. It is not known as to how much time it will take for

competition of trial on all the cases against the petitioner. So under the circumstances, this court feels that the order passed by the court below has to be set aside and permission has to be granted to the petitioner to go abroad for a period of 3 months from today and for that purpose the passport will have to be returned. But the same can be done on certain conditions. So the application is allowed and the permission is granted to go abroad and passport is returned to him on the following conditions:-

1). The petitioner shall execute a bond for Rs.25,000/-(Rupees Twenty Five Thousand Only) with two solvent sureties for the like sum each to the satisfaction of the Chief Judicial Magistrate Court, Thalassery and also to file an undertaking in the form of an affidavit that he will surrender the passport before the expiry of 3 months period fixed by this court and in the meantime if his presence is required in connection with the trial of the case, he will appear in person and co-operate with the trial of the case.

2). The petitioner is also directed to deposit Rs.20,000/- before the court below as cash security for

compliance of the directions, if any violation is committed, this amount will be forfeited by the court below.

3). The petitioner shall surrender the passport on or before 22.12.2015. The petitioner's presence is required as directed by the court and the petitioner shall appear in person on those occasions as directed by the court below and co-operate with the trial of the case.

So the application is allowed with the above conditions

Office is directed to communicate this order to the concerned court immediately by Fax.

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV