

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. 6271 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 605/2012 of J.M.F.C., PARAVOOR IN
CRIME NO.188/2003 OF PARAVOOR POLICE STATION, KOLLAM

PETITIONER(S)/2ND ACCUSED:

ANTONY, AGED 39 YEARS,
S/O.ABRAHAM, RESIDING AT BESAJ BHAVAN,
NEAR MUSLIM MOSQUE, KANNANALLOOR CHERRY,
TAZHUTHALA VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA)

RESPONDENT(S) :

THE STATE OF KERALA
REPRESENTED THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
AT ERNAKULAM THROUGH THE SUB INSPECTOR OF POLICE,
PARAVUR POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SMT.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

Crl. M.C. No.6271 of 2015

Dated this the 22nd day of September, 2015

ORDER

This criminal miscellaneous case is filed by the second accused in C.C.No.605/2012 on the file of the Judicial First Class Magistrate Court, South Paravur, for issuing a direction to the magistrate to consider and dispose of his bail application under Section 482 of Code of Criminal Procedure (hereinafter called the 'Code').

2. It is alleged in the petition that, the petitioner has been arrayed as second accused in Crime No.188/2003 on the file of the Judicial First Class Magistrate Court, South Paravur, along with other accused persons alleging offences punishable under Section 143, 147, 452, 294(b), 323, 427 read with Section 149 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.C.94/2004 on the file of the Judicial First Class Magistrate Court, South Paravur. Since the

petitioner and another accused did not appear, the case against them was split up and refilled as C.C.No.605/2012 and case against other accused persons had been proceeded with. Now it is understood that a non-bailable warrant is pending against him. Though he is prepared to surrender, he apprehends that, his bail application will not be considered and he will be remanded to custody. So the petitioner has no other remedy, except to approach this court, seeking the following relief:

“It is most humbly prayed that this Hon'ble Court may be pleased to direct the Judicial First Class Magistrate Court, Paravur to consider the bail application filed by the petitioner in C.C.No.605/2012 (Crime No.188/2003 of Paravur police station, Kollam District), on the date of filing of the same itself in accordance with law, and to release the petitioner in bail, taking into account the fact that his previous non-appearance of the petitioner was not willful”.

4. Considering the nature of relief claimed in the petition, this court felt that, the petition can be disposed of today itself, after hearing the learned counsel for the petitioner and learned Public Prosecutor.

5. Heard Sri.S.Biju, counsel appearing for the petitioner and Smt.P.Maya, Public Prosecutor appearing for the State.

6. The counsel for the petitioner submitted that, on account of the pendency of the non-bailable warrant, if he surrenders, his bail application will not be allowed. But it is now understood that a non-bailable warrant is pending against him. Though he prepared to surrender before the court below, he apprehends that, he is likely to be remanded without considering the bail application. Unless a direction is given from this court, normally the bail application will not be considered on the same date.

7. The application was opposed by the learned Public Prosecutor on the ground that he is an absconding accused.

8. Admittedly the petitioner was the original second accused in Crime No.188/2003 of South Paravur police station, which ended in filing of final report and taking cognizance of the case as C.C.No.94/2004 on the file

of the Judicial First Class Magistrate Court, South Paravur, Kollam District. It is also an admitted fact that, except two accused persons including the petitioner, others faced trial and case against the two accused persons including the petitioner was split up and refilled as C.C.No.605/2012. Since he did not appear, a non-bailable warrant is pending against him. The apprehension of the petitioner that, if he surrenders and moves for regular bail, he will be remanded to custody and his bail application will not be considered, is without any basis, as this court has in several matters of this nature observed that, the presiding officers of the criminal court are duty bound to consider and dispose of the bail applications filed by the accused persons, on the date of filing of the application on surrender of the accused itself, as far as possible on the date of filing of the application itself. So there is no necessity to issue any direction as such claimed in the petition. However considering the apprehension raised by the counsel for the petitioner, this court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Judicial First Class Magistrate Court, South Paravur, in C.C.605/2012 and moves for recalling the warrant and release him on bail, then the learned magistrate is directed to consider and dispose of the application, as far as possible, on the date of filing of the application itself, after hearing the Assistant Public Prosecutor of that court, in accordance with law.

With the above direction and observation, this criminal miscellaneous case is disposed of.

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

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge