

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

Cr1.MC.No. 6286 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 458/2014 of J.M.F.C.-I, THAMARASSERY IN
CRIME NO.253/2013 OF THAMARASSERY POLICE STATION, KOZHIKODE

PETITIONER(S) :

ABDUL MAJEED, AGED 45 YEARS,
S/O. ALAVI, MURINGOLIPOYIL HOUSE,
VELLIMADUKUNNU P.O.,
KOZHIKODE, NOW RESIDING AT ANNIKODE HOUSE,
PUTHOOR P.O., NAGALIKKADU, KOZHIKODE DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S) :

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

BY PUBLIC PROSECUTOR SMT. SAREENA

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.6286 of 2015

Dated this the 22nd day of September, 2015

ORDER

This criminal miscellaneous case is filed by the first petitioner in C.C.No.458/2014 on the file of the Judicial First Class Magistrate Court-I, Thamarassery, Kozhikode, for issuing a direction 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 first accused in C.C.No.458/2014 on the file of the Judicial First Class Magistrate Court-I, Thamarassery, which arose out of a suo moto case registered by Thamarassery police in Crime No.253/2013 against the petitioner and two others, alleging offences punishable under Section 465, 468 read with Section 34 of the Indian Penal Code.

3. The counsel for the petitioner submitted that he has not committed any offence and it is also understood

that a non-bailable warrant is pending against him in the case and he had not received any summons. He is prepared to surrender, but 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 court of Judicial First Class Magistrate-I, Thamarassery to release the petitioner on bail on the date of surrender itself in C.C.No.45814 of Thamarassery police station, in the interest of justice”.

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 the learned Public Prosecutor Smt. Sareena P. George appearing for the State.

5. The counsel for the petitioner submitted that, he has not committed any offence and he has been falsely implicated in the final report alone and he had not received

any summons and that was the reason why he could not appear. 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.

6. The application was opposed by the learned Public Prosecutor.

7. It is an admitted fact that, the petitioner has been arrayed as first accused in C.C.No.458/2014 pending before Judicial First Class Magistrate Court-I, Thamarassery. Whether he had committed an offence, whether he has been falsely implicated as accused etc are matter to be considered on the basis of evidence. It is also an admitted fact that, non-bailable warrant is pending against him. If he does not really received summons, he can

very well surrender before the concerned court and appraise that court about that fact. Further the apprehension of the petitioner that, if he surrenders, 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 expected to dispose of the bail applications filed by the accused persons, on the date of his surrender itself, as far as possible, after hearing the Assistant Public Prosecutor of that court. Under such circumstances, there is no necessity to issue any specific direction as claimed in the petition. However, considering the apprehension raised by 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-I, Thamarassery, and moves for recalling the warrant and release him on bail in

C.C.No.458/2014 (in Crime No.253/2013 of Thamarassry police station) pending before that court, then the learned magistrate is directed to consider and dispose of the bail application, as far as possible, on the date of filing of the application, 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

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